

CLERK'S COPY

## **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1941**

**No. 161**

**CLARENCE A. STEWART, ADMINISTRATOR OF  
THE ESTATE OF JOHN R. STEWART; DECEASED,  
PETITIONER,**

**vs.**

**SOUTHERN RAILWAY COMPANY**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JUNE 13, 1941.**

**CERTIORARI GRANTED OCTOBER 13, 1941.**





**United States Circuit Court of Appeals**  
**EIGHTH CIRCUIT.**

**No. 11,609**

**CIVIL.**

**SOUTHERN RAILWAY COMPANY, A CORPORA-  
TION, APPELLANT,**

**VS.**

**CLARENCE A. STEWART, ADMINISTRATOR OF  
THE ESTATE OF JOHN R. STEWART,  
DECEASED, APPELLEE.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MISSOURI.**

**FILED OCTOBER 23, 1939.**

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**Pleas and proceedings in the United States Circuit Court  
of Appeals for the Eighth Circuit.**

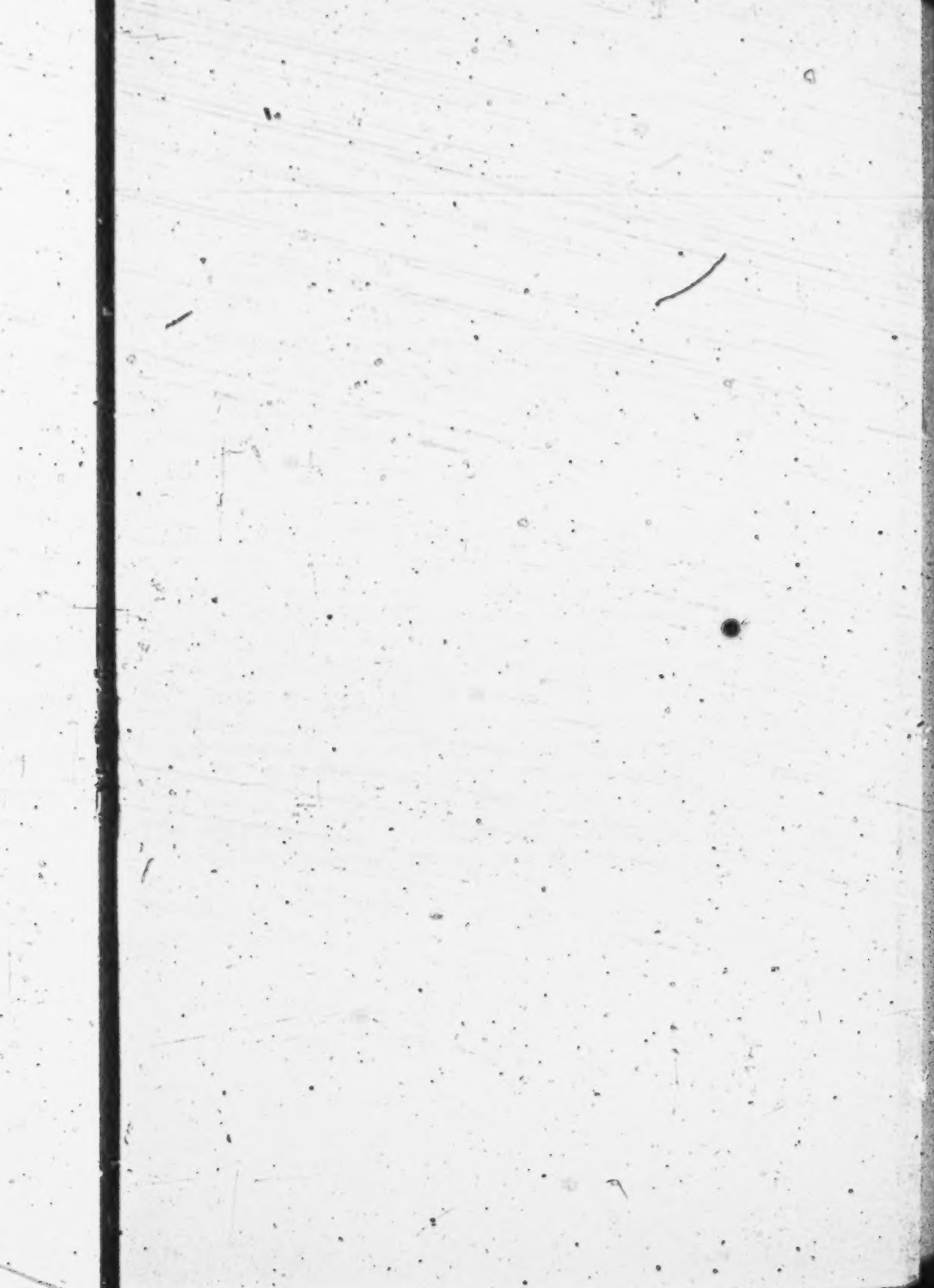
**Attest:**

**E. E. KOCH,**

**Clerk of the United States Circuit  
Court of Appeals for the Eighth  
Circuit.**

**(Seal)**

Be it Remembered that heretofore, to-wit, on the twenty-eighth day of October, A. D. 1939, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Southern Railway Company, a Corporation, was Appellant, and Mary Stewart, Administratrix of the Estate of John R. Stewart, Deceased, was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:





[fol. 1] Notice of Appeal to the Circuit Court of Appeals  
Under Rule 73 (b).

(Filed Sept. 19, 1939.)

In the District Court of the United States for the Eastern  
Division of the Eastern Judicial District of Missouri.

Mary Stewart, Administratrix of the Estate of John R.  
Stewart, deceased, Plaintiff,  
No. 12154 vs. Div. No. 2.  
Southern Railway Company, a corporation, Defendant.

Notice Is Hereby Given that Southern Railway Com-  
pany, a corporation, defendant above named, hereby ap-  
peals to the Circuit Court of Appeals for the Eighth Cir-  
cuit from the final judgment entered in this action on  
June 13, A. D., 1939, which became final on August 24,  
1939, on overruling motion for a new trial or for judgment  
notwithstanding the verdict.

SOUTHERN RAILWAY COMPANY,  
By Arnot L. Sheppard,  
Walter N. Davis,  
Union Station,  
St. Louis, Missouri.

Wilder Lucas,  
620 Rialto Building,  
St. Louis, Missouri.  
Attorneys for Appellant,  
Southern Railway Company,  
a corporation.

[fol. 2]

## Petition.

(Filed April 20, 1937)

In the District Court of the United States for the Eastern  
Division of the Eastern Judicial District of Missouri.

To the March Term, 1937.

Mary Stewart, Administratrix of the Estate of John R.  
Stewart, deceased, Plaintiff,

No. vs. Div. 12154

Southern Railway Company, a corporation, Defendant.

Plaintiff states that the above-named defendant is and at all the times hereinafter mentioned was a corporation organized and existing under and by virtue of law owning and operating railroad properties in this state and elsewhere, and is now and at the times hereinafter mentioned was a common carrier by railroad, and plaintiff further states that while the said defendant was engaging in commerce between two or more of the several states of the United States one John R. Stewart, now deceased, was on the 12th day of February, 1937, injured in such a manner and to such extent while he was employed by the defendant in such commerce that he died as a result thereof on the 14th day of February, 1937. Such injuries and death was a direct result of defects and insufficiencies in defendant's cars and appliances thereof.

Plaintiff further states that on or about the 12th day of February, 1937, at East St. Louis, Illinois, the deceased was employed by defendant as a switchman, and on said [fol. 3] date was coupling up certain cars on track known as No. 12 in its yards; that one or more of said cars deceased was coupling and switching contained goods, wares and merchandise then upon defendant's lines which were en route from various states of the United States to various other states of the United States; and the deceased at the time he received his mortal injuries was engaged in interstate commerce with defendant. That defendant at the time deceased was injured was using, hauling and permitting to be hauled and used on its lines and its railroads, which lines and railroads were engaged in interstate commerce, cars used in moving interstate traffic and used on railroads engaged in interstate commerce and used

in connection with trains, locomotives, engines, cars and similar vehicles used on railroads engaged in interstate commerce, the cars between which John R. Stewart, the deceased, was working when he received the mortal injuries herein complained of, which cars were not equipped with couplers coupling automatically by impact and which could be coupled without the necessity of men going between the ends of the cars in violation of the laws of the United States and of the Safety Appliance Act of March 2, 1893, 37 Statutes at Large 531, Chapter 196, as amended by Act of March 2, 1903, 32 Statutes at Large 943, Chapter 976, so that at the time deceased was injured it was necessary for him in the exercise of his ordinary duties as a switchman for defendant in order to couple the said cars to go between the ends of same for the purpose of coupling them, and while he was between the ends of said cars preparing the couplers for the purpose of coupling the cars, the cars were moved, crushing the arm of the plaintiff in such a manner as to cause his death two days later on the 14th of February, 1937.

[fol. 4] Plaintiff alleges that the injuries and death of the deceased were direct results of the violation on the part of defendant of the Statute herein before referred to.

Plaintiff further states that the arm and body of deceased were severely crushed, and that he suffered greatly from shock, that he suffered consciously great and excruciating pain and anguish for over two days from the time he was injured to the time he expired.

Plaintiff further states that John R. Stewart, now deceased, left surviving him a widow, Mary Stewart, who was dependent upon him for support and who has suffered pecuniary loss by reason of his death. That the said Mary Stewart at the time of the death of John R. Stewart and prior thereto was his wife, and deceased did not leave surviving him any other wife or minor children than the ones named above, and the plaintiff further states that she is the duly appointed, qualified and acting administratrix of the estate of John R. Stewart, now deceased, and is his personal representative, and that this action is brought [for] the benefit of herself as widow under the Federal Employers Liability Act.

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Wherefore, plaintiff states that the damages sustained by John R. Stewart on account of the conscious pain suffered by him prior to his death aforesaid amounts to the sum of Ten Thousand Dollars (\$10,000.00), and the pecuniary loss sustained by reason of the death of John R. Stewart by Mary Stewart for whose benefit this action is brought is Fifty-Five Thousand Dollars (\$55,000.00), and that the total damage sustained by plaintiff as the personal representative of John R. Stewart is the total sum of Sixty-Five Thousand Dollars (\$65,000.00), and plaintiff [fol. 5] prays judgment for said amount together with her costs herein.

CHAS. P. NOELL.

[fol. 6] (Summons and Marshal's Return.)

United States District Court

Eastern Division, Eastern District of Missouri.

The President Of The United States Of America,

To the Marshal of the Eastern District of Missouri,—  
Greeting:

You Are Hereby Commanded, That you summon Southern Railway Company, a corporation late of your District, if it may be found therein, so that it be and appear within twenty days after service of this summons before the United States District Court for the Eastern District of Missouri, at St. Louis, Mo., to plead, answer or demur to petition of Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased.

And have you then and there this writ. Returnable May 10, 1937.

Witness, the Honorable Geo. H. Moore, United States District Judge at St. Louis, Missouri, this 20th day of April, A. D. 1937.

(Seal)

JAMES J. O'CONNOR,

Clerk.

By Clara Redmond,

Deputy Clerk.



[fol. 7]

**Marshal's Return,**

I Hereby Certify that in St. Louis, Missouri, on the 3rd day of May, 1937 I executed the within writ by serving the same on the within named Southern Railway Company, a corporation, by delivering a true and correct copy of Summons together with a copy of Petition in this cause annexed as furnished by the Clerk of the Court to Mr. L. H. Woodall, Assistant General Manager, of the within-named Southern Railway Company, a corp., no higher officers being present at the time of service.

**WILLIAM B. FAHY,**  
United States Marshal.

Marshal's fees \$4.06.

**S. Cortopassi,**  
Deputy.

Endorsed: Filed May 4, 1937, Jas. J. O'Connor, Clerk.

[fol. 8] Docket Entry Showing Filing of Answer by  
Defendant.

May 24, 1937.

Answer of defendant to plaintiff's petition filed.

[fol. 9] Second Amended Answer to Plaintiff's Petition.  
(Filed March 20, 1939.)

In the District Court of the United States for the Eastern  
Division of the Eastern Judicial District of Missouri.

Mary Stewart, Administratrix of the Estate of John R.  
Stewart, deceased, Plaintiff,  
No. 12154. vs.

Southern Railway Company, a corporation, Defendant.

Comes now the defendant and, leave of Court first being  
had and obtained to plead, for its second amended answer  
to plaintiff's petition filed herein, denies each and every  
allegation in said petition contained.

Further answering defendant, Southern Railway Com-  
pany says that the plaintiff herein was duly appointed  
Administratrix of the estate of John R. Stewart, deceased,  
by the Probate Court of St. Clair County, State of Illinois,

on or about April 16, 1937, as shown by a copy of letters of administration herewith attached and made a part hereof and marked Exhibit "A" and that thereafter and on or about April 20, 1937, plaintiff as such Administratrix filed a suit for damages against defendant in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and that, thereafter, she did file in the Probate Court of the County of St. Clair, State of Illinois, a petition duly signed and verified by her, in and by which petition plaintiff represented that the defendant had offered and agreed, provided a full release could be obtained, to pay to said petitioner as administratrix of the estate of John R. Stewart, deceased, the sum of Five Thousand Dollars (\$5,000.00) in full settlement of all claims and demands on account of the fatal injuries to said deceased; and prayed that an order be entered in said Court approving said settlement and authorizing and directing the petitioner as such Administratrix to make such [fol. 10] settlement, and, upon payment to her of Five Thousand Dollars, to execute and deliver to said Southern Railway Company a release in writing, fully releasing, settling, satisfying and determining all claims, demands and rights of action of every kind, nature and description which she, as such administratrix of said estate had on account of the fatal injuries to said deceased; a copy of said petition so filed in said Probate Court is hereto attached and made a part hereof and marked Exhibit "B". That on November 30, 1937, after said petition was presented to said Probate Court, an order was entered in and by said Probate Court, in and by which said settlement was approved, and authorized the said plaintiff, as such administratrix, upon receipt of the sum of Five Thousand Dollars to settle said claim and to execute and deliver to the Southern Railway Company a full and complete release, settling, satisfying and discharging all claims, demands, actions and causes of action of every kind, nature and description which she, the said administratrix of said Estate had against said Southern Railway Company on account of the fatal injuries to said John R. Stewart, deceased, a copy of which order is hereto attached and made a part hereof and marked Exhibit "C". That after said order was so entered by said Probate Court, and on November 30, 1937, the said Mary Stewart as administratrix of the Estate of



John R. Stewart, deceased was paid the sum of Five Thousand Dollars by said Southern Railway Company and that receipt of said Mary Stewart, as such administratrix, executed a release to defendant, releasing and discharging it from all claims, demands, actions and rights of action that she then had or might thereafter have against defendant herein by reason of the fatal injuries to the said John R. Stewart, deceased, and in and by said release the said administratrix as such specifically accepted the sum of Five Thousand Dollars in full settlement of this suit. A copy of the release so signed by said Mary Stewart, administratrix of the Estate of John R. Stewart, deceased, is hereto attached and made a part hereof and marked Exhibit "D"; and a copy of the check for Five Thousand Dollars, which was given to the said Mary Stewart, as such administratrix, in consideration of said release, was thereafter cashed by said Mary Stewart as administratrix of the [fol. 11] Estate of John R. Stewart, deceased, and she received the money thereon and appropriated it to her use as such administratrix, is herewith attached and made a part hereof and marked Exhibit "E".

Thereafter on or about December 10, 1937, the said Mary Stewart filed in the Probate Court of St. Clair County, State of Illinois, a petition to set aside the settlement of her claim as such administratrix against defendant herein; a copy of which petition is herewith attached and made a part hereof and marked Exhibit "F". Thereafter said defendant herein filed a motion to intervene in the matter of setting aside the said settlement, a copy of which is hereto attached and made a part hereof, and marked Exhibit "H" and thereafter on January 31, 1938 said motion was granted, as shown by a copy herewith attached and made a part hereof and marked Exhibit "I". Thereafter on January 31, 1938, in the Probate Court of St. Clair County, Illinois the motion of Mary Stewart, as administratrix of the Estate of John R. Stewart, deceased to set aside approval of settlement for fatal injuries to her decedent was by said Probate Court of St. Clair County, State of Illinois, denied, a copy of which is hereto attached and made a part hereof and marked Exhibit "J".

Wherefore having fully answered defendant prays to be hence discharged with its costs.

**WILDER LUCAS,**  
**WALTER N. DAVIS,**  
 Attorneys for Defendant.

[fol. 12]

**Exhibit A.**

**Letters of Administration.**

State of Illinois,  
 County of St. Clair.—ss.:

**The People Of The State Of Illinois To All To Whom These Presents Shall Come—Greeting:**

**Know Ye, That, whereas, John R. Stewart of the County of St. Clair, and State of Illinois, died intestate as it is said, on or about the 14th day of February A. D. 1937, having at the time of his decease, personal property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same.**

**To The End, Therefore, that the said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Mary Stewart of the County of St. Clair, and State of Illinois, Administratrix of all and singular the goods and chattels, rights and credits, which were of the said John R. Stewart at the time of his decease; with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State, and in general to do and perform all other acts which now are, or hereafter may be required of her by law.**

**Witness, L. O. Reinhardt, Clerk of the Probate Court, in and for said County of St. Clair, at his office in Belleville, this 16th day of April A. D. 1937 and the seal of said Court hereunto affixed.**

(Official Seal)

**L. O. REINHARDT,**  
 Clerk of the Probate Court.  
 By **E. C. Schobert,**  
 Deputy.

[fol. 13] State of Illinois,  
St. Clair County.—ss.:

I, L. O. Reinhardt Clerk of the Probate Court of said County, Do Hereby Certify, that the within and foregoing is a true copy of the original Letters of Administration issued to Mary Stewart as Administratrix of the Estate of John R. Stewart Deceased, as fully as the same appear of Record in my Office, in Administrator's Record Book 38 at Page 45. And I further certify that said Letters of Administration are now in full force and effect.

Given under my hand and the seal of said Court, this 20th day of April A. D. 1937.

L. O. REINHARDT,  
Clerk of the Probate Court.  
By Jerome J. Mackin,  
Deputy.

(Seal)

[fol. 13a] (Exhibit B to Second Amended Answer.)

Exhibit B attached to the Second Amended Answer is the Petition of Mary Stewart, as Administratrix, etc., and said exhibit is omitted at this place in the printed record in order to avoid duplication inasmuch as it is the same as Defendant's Exhibit 1 appearing at folio page 128 of this printed record.

(Exhibit C to Second Amended Answer.)

Exhibit C attached to the Second Amended Answer is the Order of the Probate Court approving settlement In the Matter of the Estate of John R. Stewart, deceased, and said exhibit is omitted at this place in the printed record in order to avoid duplication inasmuch as it is the same as Defendant's Exhibit 4 appearing at folio page 151 of this printed record.

(Exhibit D to Second Amended Answer.)

Exhibit D attached to the Second Amended Answer is the Release of Mary Stewart, Administratrix, etc., et al., to Southern Railway Company, dated November 30, 1937, and said exhibit is omitted at this place in the printed record in order to avoid duplication inasmuch as it is the same as

Defendant's Exhibit 2 appearing at folio page 131 of this printed record.

(Exhibit E to Second Amended Answer.)

Exhibit E attached to the Second Amended Answer is the Voucher of the Southern Railway Company to Mary Stewart, Administratrix, etc., for \$5,150.00, dated November 30, 1937, and said exhibit is omitted at this place in the printed record in order to avoid duplication inasmuch as it is the same as Defendant's Exhibit 3 appearing at folio page 133 of this printed record.

(Exhibit F to Second Amended Answer.)

Exhibit F attached to the Second Amended Answer is the Petition of Mary Stewart, Administratrix, to set aside Order of Probate Court authorizing settlement, and said exhibit is omitted at this place in the printed record in order to avoid duplication inasmuch as it is the same as Defendant's Exhibit 5 appearing at folio page 155 of this printed record.

(Exhibit H to Second Amended Answer.)

Exhibit H attached to the Second Amended Answer is the Application of Southern Railway Company for leave to Intervene at hearing on Motion of Mary Stewart, Administratrix, etc., to set aside Order of Settlement, and said exhibit is omitted at this place in the printed record in order to avoid duplication inasmuch as it is the same as Defendant's Exhibit 7 appearing at folio page 158 of this printed record.

[fol. 14]

Exhibit I.

State of Illinois

St. Clair County—ss.:

In the Probate Court

In the matter of

The estate of John R. Stewart, deceased.

November Term, A. D. 1937.

November 30, A. D. 1937.

Petition of the administratrix for authority to compromise for claim of wrongful death of deceased, presented.



Ordered that administratrix be authorized to compromise claim as per written order on file.

December Term A. D. 1937.

December 10, A. D. 1937.

Petition of Mary Stewart to set aside order on compromise presented. Hearing on petition set for January 7th, 1938, 9 A. M. Clerk to notify petitioner.

January Term A. D. 1938.

January 31, A. D. 1938.

Petition of the Southern R. R. Co., to intervene in the motion heretofore filed in behalf of Mary Stewart, administratrix, to set aside settlement for wrongful death of the deceased. Motion granted.

Motion of Mary Stewart to set aside approval of settlement for fatal injuries to her decedent, denied.

[fol. 15] State of Illinois,  
St. Clair County.—ss.:

I L. O. Reinhardt Clerk of the Probate Court, and keeper of the records and files thereof in and for said County, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of petition of Mary Stewart to set aside order on compromise on settlement in the matter of the estate of John R. Stewart, deceased, also petition of Southern Railway Company to intervene in the motion heretofore filed in behalf of Mary Stewart, administratrix, of the estate of John R. Stewart, deceased, also copy of orders of the Probate Court in the matter of the estate of John R. Stewart, deceased.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Belleville, this 13th day of March A. D. 1939.

L. O. REINHARDT,  
Clerk.

By.....  
Deputy.

(Seal)

State of Illinois,  
St. Clair County.—ss.:

I, Paul H. Reis Judge of the Probate Court of St. Clair County, Illinois, do hereby certify that L. O. Reinhardt whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, Clerk of the Probate Court of St. Clair County aforesaid, and keeper of the Records and Seal thereof, duly elected and qualified to office, that full faith and credit are, and of right ought to be given to all his official acts as such, in all Courts of record and elsewhere, and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 13th day of March  
A. D. 1939.

(Seal) PAUL H. REIS, (Seal)  
Judge of the Probate Court.

State of Illinois,  
St. Clair County.—ss.:

I, L. O. Reinhardt Clerk of the Probate Court, in and for said County, in the State aforesaid, do hereby certify that Paul H. Reis, whose genuine signature appears to the foregoing certificate, was at the time of signing the same and now is Judge of the Probate Court of St. Clair County, Illinois, and sole presiding Judge of said Court, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such, in all Courts of record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed seal of said Court, at my office in Belleville, this 13th day of March A. D. 1939.

L. O. REINHARDT,  
Clerk.

By.....  
Deputy.

(Seal)



Copy

[fol. 16]

Reply.

(Filed May 27, 1938, Refiled May 31, 1939.)

In the District Court of the United States For the Eastern  
Division of the Eastern Judicial District of Missouri.

Mary Stewart, Administratrix of the Estate of John R.  
Stewart, deceased, Plaintiff,  
No. 12,514. vs. Div.....

Southern Railway Company, a corporation, Defendant.

Comes now the plaintiff above named and for reply to the amended answer of plaintiff filed herein admits that she is the duly appointed administratrix of the estate of John R. Stewart, deceased, and admits that she filed suit for damages against the defendant in the United States District Court For the Eastern Division of the Eastern Judicial District of Missouri, and admits that she signed the documents referred to in paragraph two of defendant's amended answer, and denies each and every other or additional allegation in said paragraph contained.

For other and further reply plaintiff states that soon after the filing of this suit the claim agents and representatives of this defendant railway company began and thereafter continuously [practised] a calculated and designed procedure and course of duress, harassment, oppression, and annoyance of the plaintiff which was intended to and did obtain from the plaintiff the documents referred to in the defendant's amended answer.

Plaintiff further states that the defendant obtained the documents referred to in defendant's amended answer by means of fraud and duress and that her signature to each and every of said documents referred to in defendant's amended answer was affixed to said documents as a result of false and fraudulent statements and representations made to plaintiff by the defendant's agents, attorneys, and [fol. 17] claim agents and as a part of the [practised] course and calculated design of the defendant to settle plaintiff's cause of action against the defendant without permitting the plaintiff to have any advice or aid of counsel, and for a sum of money which was wholly inadequate

and insufficient to compensate the plaintiff for the damages she had suffered.

Plaintiff further states that in conjunction with and as a part of the calculated harassment, fraud, duress, and design of the defendant to settle said cause of action without permitting the plaintiff aid of counsel and in order to settle said cause of action for an inadequate and inconsequential sum the defendant by and through its agents, attorneys, and claim agents were guilty of the following actions and conduct toward the plaintiff, to-wit:

That during nearly all the pendency of this suit she has been from time to time and upon numerous occasions harassed and spied upon by said attorneys and claim agents of defendant in an effort on their part to wrongfully induce plaintiff to settle her cause of action against the defendant, without the advice of her counsel and without his knowledge or consent, for an amount greatly disproportionate to that which she is entitled to recover herein, and that for such purpose said attorneys and claim agents of defendant have, during the pendency of this suit, followed plaintiff to places and cities where she went from her home in East St. Louis, to avoid such harassment, particularly to Hodgeville, Kentucky, Salem, Illinois, Coulterville, Illinois, and New Castle, Illinois; and that for the purpose of procuring such settlement defendant's said attorneys and claim agents falsely and fraudulently represented to plaintiff that she had no valid cause of action against the defendant and could recover nothing herein, and made false and slanderous statements as to the character of her attorney, and

That this case was set for trial on the docket of this [fol. 18] Honorable Court for the 8th day of December, 1937, and that the witnesses in behalf of plaintiff were duly subpoenaed to attend the trial of said cause in said Court on said day; that on or about the 23rd day of November, 1937, defendant, for the purpose of intimidating and coercing plaintiff and causing her to enter into a settlement as aforesaid and to execute a release to plaintiff and a stipulation for dismissal of this cause, induced one of the attorneys for the Terminal Railroad Association of St. Louis to call before him one Henry Hamm, the hus-

band of plaintiff's daughter and the father of plaintiff's two small grandchildren, who was an employee of the Terminal Railroad Association, and to threaten said Hamm that he would be discharged from the employment of said Terminal Railroad Association unless plaintiff should accede to the demands of defendant and settle her cause of action as aforesaid; and that said attorney of said Terminal Railroad Association did so call said Hamm before him and by intimidation, coercion and threats of causing such discharge of said Hamm, did cause him to believe that he would lose his position and employment with said Terminal Railroad Association, by reason whereof plaintiff's daughter and grandchildren would suffer and be in want, unless plaintiff should accede to defendant's said demands and make settlement of her cause of action as aforesaid; and that said Terminal Railroad Company, acting in behalf of and as the representative of this defendant and at its request, brought great pressure and undue influence to bear on said Hamm, by reason whereof he agreed to take and, on or about November 30, 1937, did take plaintiff to the office of defendant's attorneys and claim agents in the First National Bank Building in East St. Louis, Illinois, for the purpose of causing plaintiff to sign papers for the settlement and dismissal of her suit pending in this Court; and that, by reason of the threatened discharge of her son-in-law as aforesaid and the fear that [fol. 19] her daughter and the latter's two small children would, by reason thereof, be without means of livelihood and in want, and plaintiff's will being overcome thereby, plaintiff was wrongfully induced, through such coercion and duress, and by reason of the said false and fraudulent statements made to her as aforesaid, to sign and did sign the aforesaid stipulation for the dismissal of her cause and a release of her cause of action, all of which was done in the absence of and without the advice and consent of her counsel. And plaintiff states that by the means aforesaid she was wrongfully induced to release her claim in the sum of Sixty-five Thousand Dollars, (\$65,000.00) for the wrongful death of her husband, under the Federal Employers' Liability Act and the Safety Appliance Act, for said sum of Five Thousand Dollars (\$5,000.00), which, under the facts pertaining to the death of her husband, and under the Federal Law, was and is wholly inadequate and

represents only the earnings of her husband for about a period of two years.

And Plaintiff states that, in addition to the pecuniary loss suffered by her by reason of her husband's death, plaintiff is entitled to substantial damage, under the Federal Employers' Liability Act, for the conscious and excruciating pain her husband suffered between the time of his injury and his death, to-wit: three days; and that such pecuniary loss and the damages recoverable on account of said conscious pain and suffering, under the Federal Statutes and the decisions of the Federal Courts, entitle plaintiff to damages greatly in excess of the sum of Five Thousand (\$5,000.00) Dollars.

And plaintiff further states that a draft was given her and her son-in-law by defendant's agent and attorneys in the sum of Five Thousand Dollars (\$5,000.00), which was drawn on the treasurer of the Southern Railroad Company at Washington, D. C., that said draft was placed by plaintiff in the Southern Illinois Trust Company Bank at East [fol. 20] St. Louis, Illinois, for collection, and was not collected by said Bank until the 6th day of December, 1937; and that as soon as the bank would permit the withdrawal of said Five Thousand Dollars (\$5,000.00) plaintiff withdrew the same and, on December 7, 1937, duly tendered back to defendant said sum of Five Thousand Dollars, (\$5,000.00) together with interest thereon in lawful money of the United States, which tender defendant refused.

Wherefore, plaintiff prays that the Judgment of the Probate Court of St. Clair County, Illinois, referred to in defendant's amended answer be declared null, void and of no effect and that the same was procured by fraud and duress; and that the order of the Judge of said Probate Court which said order is referred to in said defendant's amended answer be declared null, void and of no effect and as being and constituting a part of the result of the fraud and duress [practised] upon the plaintiff; and that the release and contract of settlement referred to in defendant's amended answer be declared null, void and of no effect; and that the plaintiff have her full and complete remedy



at law for the damages she has suffered as in her petition alleged and set forth.

**R. SHAD BENNETT,  
CHARLES P. NOELL,**  
Attorneys for Plaintiff.

[fol. 21] (Praecipe For Issuance of Subpoena for  
Henry Hamm.)

Issued.

United States of America,  
Eastern Division of the Eastern  
Judicial District of Missouri.—ss.:

In the District Court of the United States in and for said  
District.

Mary Stewart, Admx., Plaintiff,  
vs.

So. Ry. Co., a corp., Defendant.

You will please issue Subpoena, returnable on the 31st  
day of May, A. D. 1939, for Henry Hamm, East St. Louis,  
Ill.

Witness on behalf of the plaintiff in the above-entitled case.

**CHAS. P. NOELL,**  
Att'y for Plaintiff.

To.....,  
Clerk of said Court.

Endorsed: "Filed May 26, 1939, Jas. J. O'Connor,  
Clerk".

[fol. 23] (Motion of Defendant to Strike Out Reply Over-  
ruled; Motion of Defendant for Continuance With-  
drawn; Jury Empaneled; Trial, June 8, 1939.)

Before Judge Moore—Court No. 2.

June 8, 1939.

Now come the parties by their respective attorneys,  
whereupon motion of defendant heretofore refiled herein

to strike out plaintiff's reply to defendant's second amended answer, is submitted to the Court, and the Court having duly considered said motion doth order that same be and is hereby overruled. And now the defendant by leave of Court withdraws its motion heretofore filed for continuance on trial of this cause.

Whereupon both sides announcing ready, and it appearing that there are an insufficient number of jurors from which to empanel a jury, the United States Marshal is directed to summon eight persons to serve as talesmen herein.

And now pursuant to said order the said Marshal summons the following named persons as talesmen herein:

John J. Connors

W. C. Grafton

A. O. Grimes

Charles H. Buettner

Zeno B. Clardy

Timothy Quinlan

Charles Carroll

Julius Huber

And now there comes also the following jury, to-wit:

Benjamin C. Comfort

Thomas J. O'Brien

G. M. Alexander

Chas. Hebbeler

Wm. G. Bigalte

L. J. Braning

Kenneth A. Aderholt

Fred A. Gerber

Roy Moore

Oscar E. Broyer

Burr T. Crawford

C. A. Chase

twelve (12) good and lawful men who having been duly drawn, [summond] and chosen, are now sworn to well and truly try the issues herein joined, and a true verdict render according to the law and evidence.

Whereupon introduction of evidence in chief on behalf of plaintiff is commenced but not concluded, and further proceedings on the trial of this cause are postponed until tomorrow at 11:00 o'clock A. M.

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(Trial, June 9, 1939; Motion of Defendant for Directed Verdict Overruled.)

Before Judge Moore—Court No. 2.

June 9, 1939.

Now again come the parties by their respective attorneys, and comes also the jury heretofore empaneled and

sworn; whereupon introduction of evidence in chief on behalf of plaintiff is resumed and concluded, and motion of defendant for a directed verdict in its favor at the close of plaintiff's case in chief is filed, and submitted to the Court and by the Court after due consideration thereof is overruled.

Whereupon introduction of evidence on behalf of defendant is commenced and concluded, and introduction of evidence in rebuttal on behalf of plaintiff is commenced but not concluded, and further proceedings on trial of this cause are postponed until tomorrow at Ten o'clock A. M.

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[fol. 24]

(Trial, June 10, 1939.)

Before Judge Moore—Court No. 2.

June 10, 1939.

Now again come the parties by their respective attorneys and comes also the jury heretofore empaneled and sworn as on yesterday; whereupon introduction of evidence in rebuttal on behalf of plaintiff is resumed but not concluded, and further proceedings on the trial of this cause are postponed until Monday next at ten o'clock A. M.

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(Trial, June 12, 1939.)

Before Judge Moore—Court No. 2.

June 12, 1939.

Now again come the parties by their respective attorneys, and comes also the jury heretofore empaneled and sworn as on yesterday; whereupon introduction of evidence in rebuttal on behalf of plaintiff is resumed and concluded, and introduction of evidence in sur-rebuttal on behalf of defendant is commenced and concluded, whereupon the hour of adjournment having arrived, it is ordered that further proceedings on the trial of this cause be postponed until tomorrow at ten o'clock A. M.

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(Trial, June 13, 1939; Motion of Defendant for Directed Verdict Overruled; Verdict and Judgment.)

Before Judge Moore—Court No. 2.

June 13, 1939.

Now again come the parties by their respective attorneys, and comes also the jury heretofore empaneled and sworn as on yesterday; whereupon trial of cause is resumed. And now motion of defendant for a directed verdict in its favor at the close of all the evidence is filed, and submitted to the Court, and by the Court, overruled.

Whereupon the jury after hearing arguments of counsel for the respective parties, and being duly charged by the Court, retires to consider of its verdict, which verdict it afterwards returns into Court finding the issues herein joined in favor of plaintiff and against defendant, in the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00), and assess the damages of said plaintiff against said defendant, which verdict is in words and figures, to-wit:

Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, Plaintiff,

vs.

Southern Railway Company, a corporation, Defendant.

Verdict:

We, the jury in the above entitled cause find the issues herein joined in favor of the plaintiff, Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased [fol. 25] and against the defendant, Southern Railway Company, and assess the damages of said plaintiff against said defendant in the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00).

C. F. HEBBELER,  
Foreman.

June 13, 1939.

Which verdict is by the Court ordered filed and is filed.

It [—] therefore pursuant to the finding and verdict of the jury as aforesaid, Ordered and Adjudged that plaintiff, Mary Stewart, Administratrix of the Estate of John R.



Stewart, deceased, have and recover of the defendant, Southern Railway Company, a corporation, the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00), as her damages herein assessed, against said defendant, together with her costs and charges herein expended, for all of which judgment, costs and charges let execution issue upon praecipe filed therefor by said plaintiff.

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[fol. 26] (Order Staying Execution of Judgment Pending Motion to Set Aside Verdict and Judgment.)

(Filed June 22, 1939.)

It is hereby ordered that defendant's motion to stay execution of the judgment herein shall be and is sustained, and the execution of the judgment in this cause shall be stayed until defendant's motions to set aside the verdict and judgment entered thereon and to have judgment entered in accordance with its motion for a directed verdict, or in the alternative to be granted a new trial shall have been passed upon by this Court.

It is further ordered that in case either or both of said motions shall be overruled, then the execution of the judgment herein shall be stayed until the expiration of ten days after the Court [—] on defendants' alternative motion.

GEO. H. MOORE,  
Judge, United States  
District Court.

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[fol. 27] (Order Amending Order Staying Execution of Judgment Pending Motion to Set Aside Verdict and Judgment.)

(Filed June 24, 1939.)

It is hereby ordered that the order of this Court entered herein on Thursday, June 22, 1939, be so amended as to grant defendant a stay of execution on judgment in the above captioned matter until the expiration of thirty days instead of ten days after the ruling of this Court on defendant's motion for judgment notwithstanding the jury's verdict, or for a new trial, in the event said motion should be ruled upon adversely to the defendant by this

Court. In all other respects the aforesaid order to stand as originally drawn.

GEO. H. MOORE,  
Judge.

[fol. 28] Motion of Defendant for Judgment Notwithstanding Verdict or for New Trial.)

(Filed June 22, 1939.)

Comes now the defendant and moves the court to set aside the verdict herein and any judgment which has been rendered pursuant thereto, and notwithstanding said verdict, to have judgment entered for defendant in accordance with its motion for a directed verdict filed herein and presented to this court at the close of all the evidence in this case, upon each and every ground set forth in its said motion for a directed verdict.

Defendant further prays in the alternative for a new trial if the court should refuse to set aside the verdict and judgment herein and to enter judgment in accordance with its motion for a directed verdict as last above prayed. As grounds for said new trial defendant states:

I.

The verdict of the jury herein is not supported by any competent and legal evidence.

II.

The release executed by the plaintiff is binding upon her and there is no evidence showing that any fraud or duress entered into the execution thereof.

[fol. 29]

III.

The record and proceedings of the Probate Court of St. Clair County, Illinois, introduced in evidence, which disclose that plaintiff made application to such Court for authority to execute the aforesaid release and received authority so to do, together with the order of said Court retaining jurisdiction over the matter constituted a final judgment unappealed from and which cannot be collaterally attacked in the trial of this case. The judgment and action of the Probate Court are binding upon plaintiff where-

by she had and has no authority or right to attack in this action the release pleaded in bar hereof.

#### IV.

The court erred in admitting incompetent, irrelevant, improper and prejudicial evidence offered by plaintiff and objected to by defendant.

#### V.

The court erred in refusing to admit competent, relevant and material evidence offered by defendant.

#### VI.

The verdict by the jury is excessive and so excessive as to indicate that it resulted from passion and prejudice on the part of the jury against defendant.

#### VII.

The verdict of the jury is so indefinite as to be a nullity; for the reason that it cannot be determined whether the intention of the jury was to render a verdict in favor of plaintiff for the sum of \$17,500.00 less the sum of \$5000.00 which plaintiff had already received from defendant; or [fol. 30] whether the verdict was to be in the sum of \$17,500.00, exclusive of the \$5,000.00 payment which had already been made by defendant to plaintiff.

#### VIII.

The Court's charge to the jury is erroneous in each and every particular pointed out by defendant and included in defendant's objections and exceptions to the charge, made at the close of its delivery by the court and before the jury retired to consider its verdict. Each objection and exception to said charge is separately assigned as error.

#### IX.

The court erred in failing and refusing to give to the jury each and all of the instructions on the merits, requested by defendant at the close of all the evidence marked Instructions A to U, both inclusive; for the reasons assigned by defendant to the Court's refusal to give said instructions, immediately subsequent to the court's charge to the jury herein. The refusal of each of said instructions is separately assigned as error.

## X.

The court erred in overruling and denying defendant's motion for a directed verdict offered at the close of and of its evidence in the case.

## XI.

There is no substantial evidence in this case proving or tending to prove that the defendant was guilty of a violation of the Safety Appliance Statute of the United States [fol. 31] as alleged in the petition.

WILBER LUCAS,  
WALTER N. DAVIS,  
ARNOT L. SHEPPARD,  
Attorneys for Defendant.

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[fol. 32] Docket Entry Showing Submission of Defendant's Motion for a New Trial, Etc.

Before Judge Moore—Court No. 1.

(July 18, 1939.)

By agreement motion of defendant for judgment notwithstanding the jury's verdict or for a new trial submitted.

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[fol. 33] (Order Denying Motion of Defendant for Judgment Notwithstanding Verdict or for New Trial.)

(Filed August 24, 1939.)

United States District Court in and for The Eastern Judicial District of Missouri, Eastern Division.

Mary Stewart, Admx. etc., Plaintiff,  
No. 12154. vs.

Southern Railway Company, Defendant.

Now the Court having duly considered the motion of defendant for a new trial and for judgment non obstante, and being fully advised in the premises,

Doth Order that such motion be and is hereby overruled.

GEO. H. MOORE,  
U. S. District Judge.

August 22nd, 1939:

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[fol. 34] Docket Entry Showing the Fixing of Amount of Supersedeas Bond and to Filing Transcript of Evidence and Proceedings.

Before Judge Moore—Court No. 1.

September 18, 1939.

Application of defendant for fixing of supersedeas bond on appeal by defendant, herein to U. S. C. C. A., Eighth Circuit, from judgment heretofore entered filed, submitted and granted, and supersedeas bond of defendant on proposed appeal fixed in the sum of \$25,000.00 to be approved by the Court. Transcript of evidence and proceedings on trial of cause filed in duplicate by defendant.

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[fol. 40] Transcript of Evidence and Proceedings.

(Filed Sept. 18, 1939.)

District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, Plaintiff,  
No. 12154. vs. Court No. 2.  
Southern Railway Company, a corporation, Defendant.

Be It Remembered: That upon the the trial of this cause during the March Term, A. D. 1939, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, beginning on June 8, 1939, before Honorable George H. Moore, District Judge, and a jury, the following proceedings were had:

Appearances:

For Plaintiff, Mr. Charles P. Noell and Mr. Charles M. Hay.

For Defendant, Mr. Walter N. Davis, Mr. Arnot L. Shepard, and Mr. Wilder Lucas.

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A jury was duly impaneled and sworn. 9

Mr. Noell, on behalf of plaintiff, made his opening statement to the Court and the jury.

Mr. Davis: The defendant will reserve its statement, Your Honor.

[fol. 41] The plaintiff, to support the issues on her behalf, offered and introduced the following evidence:

LOUIS A. STOGNER, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

#### Direct Examination.

By Mr. Noell:

Q. Please state your name. A. Louis A. Stogner.

Q. Where do you live, Mr. Stogner?

A. Two miles east of Collinsville, Illinois.

Q. How old are you? A. Forty-seven.

Q. Where do you work?

A. The Southern Railway, East St. Louis.

Q. How long have you been with that company?

A. Since September 17, 1920.

Q. What is your employment with that company?

A. Switchman.

Q. Do you recall the 12th day of February, 1937, were you working as a switchman for that company?

A. How is that?

Q. Do you recall on the 12th of February, 1937?

A. The 12th, yes, sir.

Q. What yard were you working in? A. The Kotman yard.

Q. What company?

A. The Kotman yard, Southern Railway.

[fol. 42] Q. What is the name or what was the name of your engineer? A. Martin.

Q. What is his first name?

A. I will be darned if I know.

Q. What was the name of your fireman?

A. Wavy Lile.

Q. What was the name of the rest of your crew?

A. Mr. Russell and Johnson.

Q. What was his occupation, Mr. Russell?

A. He was following the engine, switchman.

Q. And who else?

A. Mr. Stewart, John Stewart.

Q. John R. Stewart; what time did you go to work for that, did you go to work that day? A. 3:00 P. M.

Q. What time was your quitting time?

A. 11:00 P. M.

Q. What kind of a day was it?

A. When the accident occurred?

Q. Yes, sir. A. About 5:40.

Q. And what kind of a day was it?

A. About 5:40 P. M.

Q. About 5:40; but what kind, that is a bright day or a dry day? A. Well, about dusk I would call it.

Q. Was it a dry day? A. Dry day?

Q. Yes. A. It was dry, yes, sir.

Q. It was dry. What track were you working on at the [fol. 43] time of the accident? A. Track No. 12.

Q. How many cars did you have on that track?

A. Well, probably eighteen or twenty.

Q. What were you doing with those cars?

A. Coupling them up.

Q. By coupling them up, what do you mean?

A. Getting the cars together so we could pull them out of the track.

Q. Where were you going to take them to?

A. Why, we were going to switch them, put them where they belonged, take part of them to what we call the junction.

Q. How many cars were attached to the engine when the accident occurred? A. About seven or eight.

Q. Which way was your engine headed? A. West.

Q. Which way were you moving in order to couple those cars? A. Well, you go ahead and back up.

Q. In other words, as you couple the cars the engine would be moved a short space westwardly, is that it?

A. Yes, sir, you have to make an opening.

Q. What kind of track was this where it occurred, straight or curved? A. Straight track.

Q. It couples—do couplers couple automatically on straight track better than they do on a curve?

[fol. 44] Mr. Davis: That is immaterial.

Q. In your experience.

Mr. Davis: That is immaterial, may it please the Court.

The Court: How is that relevant, Mr. Noel?

Mr. Noell: Well, it shows the cars were not coupled automatically, but if he objects I will withdraw the question.

Q. You say it was a straight track though?

A. Yes, sir.

Q. What were you doing at the time this accident occurred?

A. Taking check of the cars, that is, getting a list of where they go.

Q. How close were you to Mr. Stewart when he got hurt?

A. Well, I was probably about eighty or ninety feet east of him.

Q. You were probably about eighty or ninety feet east of him, in other words, you were between the engineer and Stewart?

A. No, sir, the opposite, the engineer was west of Mr. Stewart.

Q. The engineer was west of Mr. Stewart?

A. Yes, sir.

Q. Well, then was Mr. Stewart east of you?

A. No, he was west of me. I was east of Mr. Stewart and then Mr. Stewart and then the engineer was west of [fol. 45] Mr. Stewart.

Q. The engine was headed west? A. Yes.

Q. Where were these cars at on the west or east?

A. East of the engine.

Q. They were east of the engine? A. Yes, sir.

Q. Then in coupling these cars, would you come ahead or would you back up?

A. By coupling up we would back up, we would go east.

Q. I see. The engine was headed west, and you were going to take and couple these cars on that track, you would have to move, you would have to back them up?

A. Yes.

Q. In other words, the tender of that engine was close to the car? A. Yes, sir.

Q. And the locomotive attached to the engine tender was farthest away from the cars you were coupling?

A. That is right.



Q. Now, then, what side of this train did your men work, the engineer or fireman's side?

A. The engineer's side.

Q. That would be on the north side, would it not?

A. Yes, sir.

Q. Now, how many cars were coupled and attached to this engine at the time Mr. Stewart was injured?

[fol. 46] A. Well, about seven or eight.

Q. What was the first notice that Mr. Stewart had been injured that you received?

A. I heard him holler.

Q. You heard him holler? A. Yes, sir.

Q. What did you? A. I ran to him.

Q. And what position did you find him in when you got to him?

A. I found him in, with his arm caught along about here (indicating) between the draw bars.

Q. You are now indicating between the wrist and the elbow? A. Yes, sir.

Q. On your right arm? A. Yes, sir.

Q. Is that correct? A. That is right.

Q. And that was his right arm that was caught?

A. Yes, sir.

Q. Were those couplers, those knuckles on the couplers opened or closed when you got there? A. Closed.

Q. Both of them closed? A. Yes, sir.

Q. That is the knuckle on the west end or the east end of the west car, and the knuckle on the west end of the east car, they were both closed?

A. Both knuckles on both cars were closed.

Q. And his arm was caught in between those two knuckles?

[fol. 47] A. Yes, sir.

Q. Now, a knuckle is just the end of a coupler, is it not?

A. That is right.

Q. I will get you to—you might mark this Exhibit "A", Plaintiff's Exhibit "A".

Mr. Davis: I do not see how we can mark this Exhibit "A" and ever get it in the record.

Mr. Noell: Well, we can take it up and show it itself.

(A model coupler was marked by the reporter as Plaintiff's Exhibit "A".)

Q. Explain to the Court and the jury what a knuckle is on a coupler, point out what you mean by a knuckle.

A. This is what I would call the knuckle, this part here, that is open (indicating).

Q. This part right here (indicating)?

A. Yes, sir.

Q. That is a knuckle? A. What I call.

Q. This small thing here is a draw bar?

A. Yes, sir.

Q. Now, where did you find his arm caught?

A. Between this and the one on the opposite car.

Q. And the car that has a draw bar on the opposite side? A. Yes, sir.

[fol. 48] Q. That is where you found it, and you found his arm caught this way between the wrist and the elbow?

A. Somewhere.

Q. Somewhere around that?

Mr. Hay: May I suggest you turn that around so all the jury can see what you mean?

Q. This here is what you call the knuckles?

A. That part that opens, yes, sir.

Q. Now, this here, what do you mean by this, Mr. Stogner, on the outside? A. The pin lifter.

Q. I guess you understand that is not the same knuckle?

A. I understand.

Q. This is American Railway—what is that?

A. A. B. A.

Q. A. R.— A. One or the other.

Q. That stands for American Railroad Association?

A. I think, I guess so.

The Court: What do you call that lower device there?

A. The thing you got hold of is a pin lifter.

Q. That is supposed to throw this open? A. Yes, sir.

The Court: Pin lifter?

[fol. 49] A. Yes, sir.

Mr. Noell: Pin lifter, yes, sir.

Q. Sometimes they are connected, aren't they, Mr. Witness, by a pin coming this way, throws this knuckle open?

A. Yes, sir.

Q. Or sometimes they are underslung, like that?

A. Yes, sir.

Q. But in any event, they all have this pin lifter?

A. Yes, sir.

The Court: Hand that over here. I want to take a look at it.

(Plaintiff's Exhibit "A" handed to the Court, as requested.)

Q. Now, what is the purpose of that pin lifter, Mr. Witness?

A. Why, it is to open the knuckles so they will tie the different cars together so you can pull them ahead or back them up or stop them.

Q. With both knuckles closed, can you couple the cars?

A. No.

Q. With one knuckle open and one closed can you couple cars? A. Yes, sir.

Q. With both knuckles open can you couple cars?

A. Yes, sir.

Q. In other words, you got to have at least one knuckle [fol. 50] open in order to make an automatic coupling?

A. Yes, sir.

Q. Now, that is done by a man on the outside of the car with a pin lifter? A. Yes, sir.

Q. Now, then, I wish you would demonstrate just how that couple is used where a man stands on the outside, just to show the Court and jury how that is done; just take the coupler—you can stand up there, please lift it up there. It has a broader surface to set on. You might fall over there.

A. Well, anyway—

The Court: Put it over here.

A. Well, you would walk up to the car and reach down and get the lever and jerk the lifter and it kicks open.

Q. Now, have you had any experience with the pin lifter not opening up automatically? A. Yes, sir.

Mr. Davis: Now, we object to that, Your Honor. It is not a question of what experience he had, but a question of what happened in this case.

Mr. Noell: Well, what we are getting at is, we have pleaded it did not work automatically, and it was necessary for the deceased to go in and open up with his hand, and [fol. 51] and that is where his hand was found afterward caught.

We expect to show by this witness that when it don't work automatically, just what they do to open this knuckle; that is the purpose of this inquiry, which has a bearing on the case because the deceased was found in that position, and we want to explain why he went in between.

The Court: It is supposed to open automatically?

Mr. Noell: Yes, automatically.

They are supposed to open automatically, if they do not open—I seem to be testifying.

We expect to show it, how this thing opens, how he goes in there and opens it with his hand. It is certainly pertinent.

The Court: Read the question.

(Question read.)

Mr. Davis: This was on other occasions.

Mr. Noell: He has had considerable experience.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

The Court: Let me caution the witness, in the future do not answer a question when you see counsel about to [fol. 52] object until they have had the opportunity to make an objection and the Court has passed on the objection.

The Witness: All right, sir.

Q. Now, you can answer whether you had experience.

(Previous answer read.)

Q. Just state what that experience is, what is done when you are unable to get it open with the pin lifter, as Exhibit "A".



A. If you do not open by pin lifter, you jerk it a time or two, you go and pull this apart, open that car.

Q. And by reaching in you put your body in between the cars? A. Yes, sir.

Q. And you go two or three feet between the rails.

A. You have to step over the rails.

Mr. Davis: We object.

The Court: Wait a minute.

Mr. Davis: I do not like to keep on making these objections, but this is all suppose. And what is done in other instances is not a question of what was done in this instance.

The Court: It is a question of what was done in this instance.

It may be necessary to lay a foundation.

[fol. 53] Mr. Davis: Well, all right. I do not mean to object, to make frivolous objections.

The Court: I know, you may object any time you wish, Judge. No doubt you will.

Mr. Hay: And sometimes when he should not.

Q. Just demonstrate to the jury how that coupling was opened, with this closed like this, and you can't get it open from the outside of the car, before you step in, I mean after you step in between, how do you go about getting that knuckle open?

A. You give it a jerk with this lifter.

Q. With what hand?

A. Usually with the left hand, step over the rails, and then open it with your hand, like that (indicating).

Q. And you are facing in the car at the same time?

A. Yes, sir.

Q. What is the purpose of using the left hand on the pin lifter and the other hand on the, what is the, what is it, the knuckle, what is the purpose?

A. You have to face the car to do your work.

Q. Can you frequently get it open by doing that by using both hands, one on the pin lifter and one on the knuckle? A. Yes.

Q. Does it give you some kind of leverage?

[fol. 54] A. It will give you leverage, it holds the weight of the knuckle off the knuckle.

Q. That is your left hand will? A. Yes, sir.

Q. Your left hand, what is the purpose?

A. Well, to open this knuckle.

Q. How heavy are those things that swing out, pretty heavy?

A. Why yes, they weigh probably forty pounds, in that neighborhood.

Q. Now, after this accident, when you coupled the cars, which I presume you did, did you couple the cars after the accident? A. I did.

Q. How did you open the knuckle?

A. I opened it with my hand.

Q. Let me ask you, Mr. Stogner, if the coupler is working automatically, or the pin lifter, is it necessary to go in between the cars to open with your hands then?

A. No, sir.

Q. Mr. Stogner, did Mr. Stewart have any other duty there at the time other than to couple these cars?

Mr. Davis: If he knows.

Mr. Noell: Certainly, if he knows.

The Court: Yes. If he does not know he should not tell it.

[fol. 55] A. None that I know of.

Q. I see. In other words, his duty at that time was to couple these cars? A. Yes, sir.

Mr. Davis: Now, we object to that. That is leading the witness.

The Court: Sustained.

Mr. Noell: All right.

Q. Just what duty did he have?

A. Well, I told him to couple up the cars, and I would get a check of them and give him a copy of the check.

Q. Do you know whether he had any duty other than to couple the cars at the time he was hurt?

A. None that I know of.

Q. And I have reference particularly, that is nothing other than the getting this knuckle open would require him in his work there to go in between the ends of the cars?

Mr. Davis: Now, we object. We think that is a surmise and conjecture.

Mr. Noell: No, that is not surmise. We are trying to prove his duty.

The Court: The objection is sustained as to the form of your question.

Mr. Noell: How is that?

The Court: The objection is sustained as to the form.

[fol. 56] Mr. Noell: Yes, as to the form of the question.

Q. Can you mention anything that would have required him under his duties there of coupling the cars to go between the end of the cars, do you know of any duty he had other than to couple the cars?

Mr. Davis: Wait a second. Well, that is all right. I have not any objection to that.

The Court: All right. You may answer.

A. I do not know anything other than make a coupling.

Mr. Noell: All right. You may cross-examine.

#### Cross-Examination.

By Mr. Davis:

Q. What two cars was he between, Mr. Stogner, what two cars was he between?

A. I think he was between about the seventh and eighth car, if I remember right.

Q. Do you remember what the cars were?

A. One of them was a Big Four empty and I think the other one was a Michigan Central.

Q. Michigan Central car?

A. I am not positive about that.

Q. Now, whatever two cars they were, did they have automatic couplers on them? A. Yes, sir.

[fol. 57] Q. That is couplers that would automatically, couple automatically by impact? A. Yes, sir.

Q. Now, if the couplers or knuckles on the car are closed, and they are so close together, then you can't open them with a pin lifter, can you? A. No, sir.

Q. And when had you been by there before?

A. Why, just—

Q. That is by—where these two cars or where Stewart was found? A. Oh, two or three minutes.

Q. Two or three minutes? A. Yes, sir.

Q. And what position were the couplers in at that time?

A. Well, there was two or three cars along there with the knuckles closed, and they were all locked together.

Q. All locked together?

A. Yes, sir.

Q. Now, which knuckle on which car did you open, or the knuckle on which car did you open?

A. On the Michigan Central car it was.

Q. On the Michigan Central? A. Yes, sir.

Q. And you say these cars, I think you told Mr. Noell that they were headed east and west?

A. The cars were west of the engine, is that what you mean?

Q. Yes. I know, but the cars were on a track that was [fol. 58] an east and west track? A. Yes, sir.

Q. And which side were you working on?

A. The north side.

Q. The north side? A. Yes, sir.

Q. Now, which knuckle did you try to open, or which pin lifter did you try to use?

A. The one on the north side.

Q. On the north side? A. Yes, sir.

Q. And which car was that?

A. Well, that was the east car on the opening.

Q. The east car? A. Yes, sir.

Q. And the pin lifter on the other car was there also, was it? A. Yes, sir.

Q. And did you try to open the knuckle with the pin lifter on the other car? A. No, sir.

Mr. Davis: I think that is all, Mr. Noel.



### Redirect Examination.

By Mr. Noell:

Q. The pin lifter on the left side, there is only one pin lifter on the north side between those two cars, wasn't there? A. That is all.

Q. In other words, the pin lifter is on the left side of the car as you face the end of it? A. That is right.

[fol. 59] Q. If you turn around and face the side of the car, a pin lifter is on the end or right side of every car as you face it, no matter where it is in the United States, is that correct? A. If you are facing the engine.

Q. Facing the side of a car, facing the car?

A. The pin lifter on the right.

Q. On this next car tell us where the coupler is, but facing the side of the car, then the pin lifter comes out on the outside of that car, on the right side of that car?

A. That is right.

Q. But if you face the end of the car, then the pin lifter is always on the left? A. That is right.

The Court: That may be very plain to the jury.

The Witness: Yes, sir.

The Court: I am a little confused myself.

Mr. Noell: Well, we will take any kind of car.

Q. Take a box car. This is east and west. Now, of course, a box car as I understand it, both ends have couplers? A. Yes, sir.

Q. We will say here at the east end of that car there is a coupler draw bar. Now, as you face that draw bar, that pin lifter will always be right here, will it not?

[fol. 60] A. That is right.

Q. If you turn around and face the side of the car?

The Court: What does that mean in the record "right here"?

Q. Oh, yes. The pin lifter will be on the left-hand of that car, and to the left of the draw bar? A. Yes, sir.

Q. If the car is facing east and west that would be the south side of the draw bar?

The Court: The pin lifter on which side?

Mr. Noell: The south side of the draw bar.

The Court: I mean the right or the left, not the south.

Mr. Noell: The left side of the draw bar as you face the draw bar, but if you face the side of the car, no matter where you face it, the pin lifter will always be on the right and the end of the car, is that correct?

The Witness: That is right.

Q. Now, then, there is not a pin lifter on each end of the car, just on diagonal ends, is that correct?

A. Opposite ends, yes, sir.

Q. Opposite ends. In other words, the—

The Court: How many ends do they have on these cars?

Mr. Noell: Two ends, the east end and the west end, [fol. 61] in this case—

Mr. Sheppard: He means the diagonal corner.

The Court: I want to get that straight.

Mr. Sheppard: He means the diagonal corner.

The Court: I want to get that straight, and I did not know what a diagonal end was.

Q. Let me ask you this, would there be a pin lifter over on this side of the car if there was another car?

The Court: Which side do you mean?

Mr. Noell: That is on the left side of the car if it was facing there.

Q. Where would the pin lifter be on the other car?

A. You mean the car in front of this?

Q. Yes, sir.

A. It would be right opposite, be the same position as this would be if it was turned over (indicating).

Q. Now, suppose that is the west end, the east end of the west car, and Mr. Stewart was going to couple, suppose the west end of the next car.

The Court: Don't you think it would be better for you to stand away from the witness, Mr. Noel?

Mr. Noell: Yes.

Q. Suppose the west end of the east car, facing that car, where would the pin lifter be on that car?

[fol. 62] A. On this, over here (indicating).

Q. Over there. Which side is that, the north or south side?

A. That would be the south side from the track he was working on.

Q. Well, you were working on one side of the track?

A. The north side.

Q. The north side. And where was the pin lifter at, what side was it on?

A. The one we used would be on the north side.

Q. On the north side. And assuming that there would be the end of the west car, then it would be on the north-west corner that the pin lifter was that is involved in this case? A. Yes, sir.

Mr. Noell: That is all.

#### Recross Examination.

By Mr. Davis:

Q. One question more.

Mr. Hay: Well, before you go into that, may I just say if I understand, I think Your Honor and I are working mentally about the same way on this thing. May I ask the witness a question?

The Court: All right.

#### Redirect Examination.

By Mr. Hay:

[fol. 63] Q. Let's assume that this table here is a car, and that this end at which I am standing is the west end, and that is the east end over there. This would be the north side over here (indicating), wouldn't it?

A. Yes, sir.

Q. And that side the south side? A. Yes, sir.

Q. Now, the pin lifter in this instance would be over here at this corner where I am standing, wouldn't it?

A. Yes, sir.

Q. On that side; and the man who was to make the coupling would stand outside on the north side, work this pin, the lever, which would cause the knuckle to open?

A. Yes, sir.

Q. And he would not have to go inside if it worked, that is right, isn't it? A. That is right.

Q. And the only thing that would require him to get in there would be that it did not work?

A. The only thing I know of, yes, sir.

Q. Now then the pin lifter at the other end of this particular car would be over at the corner where Mr. Davis is sitting, wouldn't it (indicating)? A. Yes, sir.

Q. So that Mr. Noell is right when he says that when you face the end of a car the pin lifter is always to your [fol. 64] left, that is right, isn't it? A. Yes, sir.

Q. If you stand west of it and look east, then it is to the left, or vice versa if you get over to the other, is that right? A. That is right.

Mr. Hay: Have we got it cleared up, does that clear it up?

The Court: Yes, I think even the Court understands it now.

Mr. Davis: Are you through, Mr. Hay?

Mr. Hay: Yes.

Mr. Davis: You go ahead and examine him.

By Mr. Noell:

Q. What did you do with the cars that you had there on the track?

A. Well, we switched them and then backed some of them down to General Roofing, and the glass house, and to a place we call the junction.

Q. Was there some of them loaded and some of them empty? A. Yes, sir.

Q. Do you remember any particular place that you took any particular cars that night?

A. These cars, some of them went into the Industries down there, I just mentioned, and some of them were held over until they were ordered into the Industry.

Q. Do you remember with reference to the interstate [fol. 65] movement of these cars where some of them had come from and where they were going to?

A. Well, we had no record of that switching in the yard, all we had was the address on the cars, where they go to.



Q. What did you have there with reference to that?

A. Well, there is a little card put on the side of the car, if it is going—

Mr. Davis: We object to that. The cards are the best evidence.

Mr. Noell: Well, we will withdraw this witness temporarily.

By Mr. Noell:

Q. It was track 17 or track 12, I understand, that you were coupling up all these cars? A. Yes, sir.

Q. And you were going to couple all these cars up and take them out of there, I believe, and deliver them?

A. Yes, sir.

Q. To the various industries and places they belonged to, is that correct?

A. Switch them and back them, yes, sir.

Q. You had seven or eight coupled already, and how many more were you to couple on this track before you moved off that track?

A. I could not say how many couplings I made, made several.

[fol. 66] Q. And what time did the accident occur, about 5:40 did you say? A. About 5:40.

Q. On February 12th? A. Yes, sir.

Q. Now, then after the accident did you go with Mr. Stewart to the hospital?

A. No, sir. We took him to, up to Broadway and put him in the ambulance.

Q. And how long was it between 5:40 when he was injured, and the ambulance arrived, approximately?

A. Oh, probably fifteen minutes.

Q. And then where was he taken at, from there?

A. To St. Mary's Hospital.

Q. To St. Mary's Hospital? A. Yes, sir.

Q. Who went with him?

A. Why, some fellow by the name of Hamletts.

Q. Now, during that time was he walking, was Mr. Stewart walking?

A. Why, we put him on the foot board of the engine, and took him up to Broadway, as close as we could get, and helped him over from the track over to Broadway.

Q. Was he conscious during that time? A. Yes, sir.

Q. Was he suffering with his arm at that time after the accident? A. Apparently quite a bit.

[fol. 67] Q. How could you tell?

A. Why, he was groaning and moaning.

Q. And then did you see him any more after he was put on the ambulance? A. Not that day.

Q. No. Did you see him the following day?

A. Yes, sir.

Q. Where at? A. At the hospital.

Q. What condition was he in then?

A. Why, he was normal, seemed to be a little low-spirited, looked at his arm, but otherwise he looked all right.

Q. Did you say a little spirited or low spirited?

A. Low spirited.

Q. Was he suffering at that time with his arm?

A. Why, he did not seem to be suffering so much in the couple minutes I was with him, he cried a little bit from losing his arm.

Q. How is that?

A. He cried a little bit about losing his arm. I told him about several fellows we knew lost their arm or leg, and tried to jolly him up some and get away as quick as I could.

Q. That was the following day after he got hurt, you paid him a visit? A. Yes, sir.

Q. What was his condition before he was injured, was he normal in every respect?

[fol. 68] A. As far as I know.

Q. You had worked with him all day, of course?

A. Yes, sir.

Mr. Noell: I believe that is all.

#### Recross Examination.

By Mr. Davis:

Q. Now, before the accident when had you last seen Mr. Stewart?

A. Well, three or four or five minutes before.

Q. Three or four or five minutes before, and you had not seen him just before he, you heard him holler?

A. No, sir.

Q. And you did not see him attempt to lift the pin lifter, did you? A. No, sir.

Q. On either one of those cars? A. I did not.

Q. That he was found between? A. No, sir.

Q. Now, was he injured any other place than his arm?

A. Not that I know of, I didn't examine it.

Q. He did not complain of any other place, did he, except an injury to his arm? A. That is all.

Q. Now, the pin lifter on the north car, on the west car was on the south side, wasn't it? A. Yes, sir.

[fol. 69] Q. And the pin lifter on the east car was on the north side of the car?

A. I did not quite get your question.

Q. I say, the pin lifter on the east car was on the north side of the car? A. Yes, sir.

Q. That is, I am speaking of the two cars between which he was caught, and which you found him, that is the car in there, the pin lifter on the west car was on the south side of the car? A. Yes, sir.

Q. And the pin lifter on the east car was on the north side of the car? A. Yes, sir.

Q. And he was working on the north side of the car?

A. Yes, sir.

Q. And you did not see him at all attempt to lift these pin lifters? A. No, sir.

#### Redirect Examination.

By Mr. Noell:

Q. Do you know whether he tried to lift the pin lifters or not? A. I do not.

Q. Why?

A. Well, I was west or east of Mr. Stewart.

Q. You were west of him, or east of him, and were you paying any attention or not before he got hurt?

[fol. 70] A. I was not watching Mr. Stewart, if that is what you mean.

Q. I see. That is all.

Mr. Davis: That is all, may it please the Court.

The Court: Very well.

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HENRY MARTIN, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

## Direct Examination.

By Mr. Noell:

Q. Will you please state your name?

A. Henry Martin.

Q. Where do you live, Mr. Martin?

A. 3514 Bond Avenue, East St. Louis.

Q. Were you the engineer in the crew at the time John R. Stewart was injured February 12, 1937? A. Yes.

Q. You were on track 12, I believe. A. Yes, sir.

Q. Coupling up the cars. Your position was on the engine? A. Yes.

Q. And your fireman was Mr. Liles, was it?

A. Mr. Lile.

Q. And which side of the train was Mr. Stewart working on? A. On the north side.

Q. How far away from you, when he got hurt?

[fol. 71] A. Well, to the best of my judgment, six or seven car lengths.

Q. Six or seven car lengths. Now, an average car length is about how many feet, what would you say?

A. Well, I guess they vary in their length.

Q. What would you say they would be, approximately how many feet?

A. I would not say how long the cars were.

Q. What do they generally average, a railroad car?

A. I do not know much about that part of it.

Mr. Davis: Do you want to state the length of a car?

Mr. Noell: About forty feet.

Mr. Davis: I think we can agree on that, the average car length of a car is about forty feet.

Mr. Noell: Yes.

Q. A switchman would know that more than an engineer? A. Yes.

Q. Now, Mr. Martin, what was Mr. Stewart doing?

A. He was coupling up cars.

Q. Coupling up the cars. Now, just what would he do when he would couple up a car?

A. Well, we couple on to the engine, and went back down on Number 12, then he would walk down a little ways, give me another back up signal, give me a stop signal;



then he coupled on again, and he walked back and give [fol. 72] me a back-up signal, then he give me a stop signal, and he went in between the cars.

Q. He did. What was the purpose of giving you that stop signal just before he went in between the cars?

Mr. Davis: May it please the Court. We object to what his purpose was. He can't know his purpose.

Mr. Noell: All right. I will withdraw that.

Mr. Davis: He gave him a stop signal, he said.

Q. He did give you a stop sign, and then you saw him go in between the cars and disappear?

A. He went in between the cars.

Q. He went in between the cars; and then how many minutes of time elapsed there before the accident happened, after he went in between the cars?

A. I do not know that. I could not say.

Q. Just approximately?

A. After he went in there I heard him holler.

Q. Yes.

A. I told my fireman, I told him to run back and see what the trouble was.

Q. Had you moved your engine? A. No, sir.

Q. Do you know what caught him?

A. I had her in back motion and the brake set all the time.

Q. Your engine was stationary. Did you hear any noise of any other engines?

A. No noise, no, sir.

[fol. 73] Q. Well, do you know what caught his arm in there?

A. No.

Q. You do not know; did you ever get down off the engine to look at where he got hurt?

A. Yes, sir, after the fellow come and give me a slack ahead signal, when I stopped I went back to see what the trouble was. I said, "What is the matter". He said, "He got his arm hurt". I said, "Run down and see Mr. Freese on the lead and tell him to send for the ambulance right away".

Q. Do you know why he slacked you ahead?

A. No, I do not. I do not. I just go by signal.

Q. I know, you just go by signal. He gave you a signal to move which direction, westwardly?

A. West.

Q. By moving westwardly would that release his arm between the couplers?

A. (No response.)

Q. I say, by moving westwardly, moving your engine westwardly, would that release Stewart's arm between the closed coupler?

A. Well, I don't know what the trouble back there was. I just obeyed the signal. Outside of that I do not know what was wrong.

Q. By moving westwardly, do you know whether or not that would give him more room to get out between the cars?

[fol. 74] A. Oh, yes, slack to move ahead.

Q. By moving westwardly, would that do it?

A. Well, I would be moving east.

Q. Would that drag him or keep him tied up?

A. I do not know what position he was in, sir.

Q. Can you estimate just how long he was in between these cars? A. No.

Q. After he gave you a stop sign?

A. No, I could not.

Q. Did you pay any attention to whether or not Mr. Stewart used the pin lifter before he went in there?

A. I did not notice him.

Q. You did not notice? A. I did not notice him.

Q. As an engineer what do you look out for all the time?

A. Look out for signals.

Q. For signals?

A. To see that the way is clear.

Q. And when you got a stop sign from Mr. Stewart just before he went in between the cars, was your engine in motion or stationary at that time?

A. Well, as soon as he gave me the stop signal, I stopped, and I set my brake and remained set until I got a signal from the foreman, slack ahead.

Q. After you stopped, did you pay any more attention to anything until you heard him holler?

[fol. 75] A. I was watching for a signal all the time.

Q. And by watching for a signal you could not see Stewart because he was in between the cars?

A. No, I could not see him.

Q. Is that correct? In other words, when he got in between the ends of the cars you could not see his signal because the ends of the cars would block your view, is that correct?

A. I did not see him no more after he gave me the stop sign and went between the cars. That is the last I saw of it.

Q. When he went in between the cars that blocked your view of Stewart? A. Oh, yes.

Q. In other words, you could not see?

A. No, I could not see down there between the cars.

Q. Now, explain to the jury how you could see Stewart before he went in between the cars.

A. Because he was on the ground, gave me a signal.

Q. Where with reference to the cars was he?

A. There was no obstruction between me and him when he gave me the stop signal and went in between the cars.

Q. When he was on the outside of the car you could see him, is that correct? A. Oh, yes.

Q. When he gets on the inside, you cannot?

A. No.

Mr. Noell:—That is all.

[fol. 76]

Cross-Examination.

By Mr. Davis:

Q. Mr. Martin, there was no movement of your engine that hurt Stewart, was there?

A. No, sir, no. I was standing still with the brake set.

Q. Now, what was—you were standing still when you heard him holler? A. Yes, sir.

Q. And how long had that been, do you know?

A. No, I could not say. I did not look at my watch. It was not very long, though.

Q. Would you estimate about a minute?

A. Well, perhaps.

Q. Perhaps; that is from the time you stopped until you heard him holler it was about a minute?

A. Well, I would not say for certain it was, how long it was, it was not very long.

The Court: He never said a minute.

Mr. Davis: Sir?

The Court: He never said a minute. You asked him if it was, and he said perhaps.

The Witness: Well, I would not say just how long it was, because I did not—

Q. Well, it was after you stopped that you heard him holler, then, was it?

[fol. 77] A. Oh, yes, after he went in between the cars.

Q. Well, can you estimate that time?

A. No, I could not.

Q. Could you estimate it—was it immediately? Was it immediately after you stopped that you heard him holler?

A. Well, after I heard him—between the cars?

Q. After he was in between the cars.

A. Yes.

Q. Had your cars coupled to the other cars in any way, had your cars coupled at that time in any way?

A. Oh, I had a whole load coupled together.

Q. I know. A. Between me and him.

Q. But the cars between which he was hurt?

A. Yes, they were all coupled between me before he got hurt.

Q. But how about the cars which he was hurt in between?

A. I do not know that they was coupled, or anything about that.

Q. You do not know they were coupled or not?

A. No, I do not know nothing about that.

Q. After you stopped, and stopped still, then you saw him go in between the cars, is that it?

A. Yes, sir.

Q. Now, this was 5:40, about? A. About 5:40.

Q. Is that your recollection of the time?

[fol. 78] A. Yes, sir.

Q. And that was on February 12th. Now, was the sun shining at that time?

A. Well, I don't know. I don't believe it was, I was not certain though. It was kind of bright yet however.

Q. What was the condition of the visibility?

A. Pretty clear.

Q. Was it getting dusk, that is what I mean?

A. Well, did not have the lights burning, apparently.

Q. Did not have lights?

A. He had it with him, though.

Q. Did he signal you by light or with his hand?

A. Hand.

Q. You could see his hand, could you?

A. Oh, yes.

Mr. Davis: That is all, may it please the Court.

Mr. Noell: That is all.

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The Court: As I announced this morning, I intended to adjourn this afternoon at 3:30.

I do not think it is necessary to have the jury called back here tomorrow morning at 10:00 o'clock, because we have a number of motions on the docket. I think it is impossible to dispose of them before 11:00 o'clock at least, and maybe it will be later than that, so for that reason, (addressing the jury) you will not be required to come here [fol. 79] at 10:00 o'clock, but you should be here at 11:00 o'clock.

You may announce all parties, witnesses and jurors in the case on trial are excused until tomorrow morning at 11:00 o'clock.

Court adjourns until 10:00 o'clock tomorrow morning.

At this point, 3:30 P. M., Thursday, June 8, 1939, an adjournment was had until 10:00 o'clock A. M., Friday, June 9, 1939.

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Pursuant to said adjournment, the Court convened at 10:00 o'clock A. M., Friday, June 9, 1939, and the further hearing of this case was resumed at 11:00 o'clock, Friday, June 9, 1939, and the following proceedings were had:

The Court: You may proceed with the case on trial.

Mr. Noell: I wish to recall Mr. Stogner.

LOUIS A. STOGNER, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being



recalled to the witness stand, testified further on behalf of the plaintiff, as follows:

Direct Examination.

By Mr. Noell:

[fol. 80] Q. Just immediately, preceding the injury to Mr. Stewart, did you hear any noise of any kind?

A. I heard some cars hit, and then he hollered.

Q. What direction did you hear the noise?

A. Right at me, where the cars hit.

Q. Which end of the train would you say that the noise came from? A. The east end.

Q. And which end was your engine on?

A. The west end.

Q. Now, I believe you testified there were two cars that he was hurt between. A. Yes, sir.

Q. One was the load and one was an empty?

A. That is right.

Q. Do you remember what kind of a car that load was?

A. Well, I do not remember, the record shows it was an A. R. A.

Q. A. R. A. or T.? A. A. R. T.

Q. A. R. A. means a coupler? A. A coupler.

Q. And where was that car going?

A. McManus Transfer Company.

Q. McMahon Transfer Company? A. Yes, sir.

Q. Do you know whether or not at the McMahon Transfer Company the merchandise for the Illinois Emergency [fol. 81] Relief is unloaded?

A. That is where it was at that time.

Q. At that time. Now, which car with reference to point of the compass was the A. R. T. car?

A. I did not get your question.

Q. Was this an east or west car, the A. R. T. car, to the best of your recollection?

A. It was the east car, if I remember right.

Q. Now, A. R. T., isn't that what is known as a refrigerator car? A. Yes, sir.

Q. And in refrigerator cars they place usually perishable merchandise? A. As a rule, yes, sir.

Q. Foods, and so forth? A. Yes, sir.

Mr. Noell: I think that is all.

## Cross-Examination.

By Mr. Davis:

Q. You mean by the east car, that which you say was the A. R. T. car, the American Refrigerator Transit car, was that the car that was not coupled to the other one?

A. Yes, sir, it was, an empty was next to it, west of it, if I remember right.

Q. The empty was next west of it? A. Yes, sir.

Q. And when you passed those two cars you saw the knuckles about that position where they would not open?

[fol. 82] A. They were all jammed up together, yes.

Q. Where they would not open?

A. Yes, sir.

Mr. Davis: That is all.

## Redirect Examination.

By Mr. Noell:

Q. That was after the bump that they came together, you saw them?

A. No, as I went back, before the bump, that was before we made any coupling, all these cars were together, they jammed up together, and the knuckles were closed on two or three couplings that I had passed and Mr. Stewart was making the couplings behind him, is that what you mean, Mr. Davis.

Mr. Davis: Well, Mr. Noel asked you the question.

The Witness: I was trying to answer.

Q. Well, in making these couplings, as you make an impact with the engine and the cars, do you not?

A. That is right.

Q. And there is more or less slack in these cars, about four to six inches in each draw bar?

A. Yes, something like that.

Q. And each time the engine had moved, why there is impacts all along there, is there not?

A. It depends on how hard you hit the first cars.

[fol. 83] Q. And some of them roll from a foot away, and sometimes farther, do they not? A. That is right.

Q. You do not know what the condition was when Mr. Stewart went in between, do you? A. I do not, no.

Mr. Noell: That is all.

Mr. Davis: That is all.

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OTTO HERR, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

Direct Examination.

By Mr. Noell:

Q. Would you kindly state your name?

A. Otto Herr.

Q. Where do you live, Mr. Herr?

A. 317 North Eleventh, East St. Louis.

Q. What is your occupation?

A. Well, I am a clerk in the Transportation Department for the Southern Railroad.

Q. You were subpoenaed to bring in certain records in this court? A. Yes, sir.

Q. Have you those records with you?

A. Yes, sir.

[fol. 84] Q. And these records I presume are original records that you acquired at your office? A. Yes, sir.

Q. And you wish to take them back, of course?

A. Yes, sir.

Q. Have you a record there of a car—

A. Yes, sir.

Q. En route to the McMahon Transfer Company?

A. Yes, sir.

Q. In East St. Louis, Illinois?

A. Yes, sir.

Q. What is the car number and initial of that car, according to your record?

A. It is A. R. T. 19911.

Q. And what was that loaded with?

A. Grapefruit.

Q. And where was the origin of that car?

Mr. Davis: We object to that, Your Honor. This is not shown that that is the same car—I say, it is not shown that it is the same car.

Mr. Noell: We will connect that all up, showing that this is the only car delivered to the McMahon Transfer Company that day.

The Court: All right.

Mr. Davis: Very well.

Q. I will ask you that question right now, was that the [fol. 85] only car enroute to the McMahon Transfer that day? A. According to the records, yes.

Q. According to your record. Now, what was the origin of that car, where did it come from and what was the destination? You have already testified the destination being the McMahon Transfer, East St. Louis, Illinois.

A. Yes, sir.

Q. Where did it originate?

A. It originated at Alma, Texas.

Q. And who is the consignor, that is the shipper?

A. I would have to look at the record for that.

Q. Have you got it there handy? A. Yes, sir.

Q. All right. Look at it if it won't take but a second, look at it.

Q. It shows here, commodities purchased, secretary W. H. Quiff manager and transportation, that is all.

Q. Now, where was that car going, you say McMahon Transfer?

A. Well, it was billed to the Federal Surplus Commission Corporation for account of the Illinois Emergency Relief Commission for delivery to Ross P. Barnes, Superintendent, St. Clair County, 748 Walnut Street, East St. Louis, Illinois.

Q. Now, that 748 Walnut Street, is the McMahon Transfer, is it not?

[fol. 86] A. Yes, sir.

Mr. Noell: I believe that is all.

Mr. Davis: I do not think I have any questions.

(A short pause.)

Mr. Davis: We have no questions, Your Honor, please.

Mr. Noell: We have not introduced these records as exhibits because he has to take them back to his office. It is agreeable, I presume, with counsel.

Mr. Davis: Well, he has testified, Your Honor.

The Court: Yes. There is no occasion to.

(Witness excused.)



MRS. MARY STEWART, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

Direct Examination.

By Mr. Noell:

Q. Will you please state your name?

A. Mary Stewart.

Q. How old are you, Mrs. Stewart?

A. I am sixty.

Q. You are sixty now?

A. Well, not now. It will be my next birthday. Fifty-nine.

Q. How old was your husband at the time of his death?

A. Sixty.

[fol. 87] Q. What was the condition of his health at the time of his death? A. Well, fairly good.

Q. Did he work steadily?

A. Well, he—yes, he did.

Q. About what was his earnings? A. Well—

Mr. Davis: If she knows, Your Honor. I do not know how she could know.

The Court: Well, she might know.

Mr. Davis: Yes.

The Court: That might be developed.

Q. Do you know about what his earnings were?

A. Well, on the average of—

Q. Well, tell us how you come to know?

A. Well, he most always brought his check home and showed it to me.

Q. And about what were those checks, what would those checks be each time you would see them?

A. Well, generally eighty, ninety, sometimes a little less and sometimes more. He has gone as high as a hundred dollars, one hundred and ten dollars, depending on the overtime he got.

The Court: That is for how long a period of work?

A. How?

Q. For how long a period is that, a week or a month?



[fol. 88] A. Well, they are paid every two weeks.

Q. Every two weeks? A. Yes, sir.

Q. Every two weeks. What would you estimate just about a rough average, would be a fair average, what would you think?

Mr. Davis: I think we have his earnings, for the last year, Your Honor, and are going to put them on the stand.

Mr. Noell: You say you will?

Mr. Davis: Yes.

Mr. Noell: Well, if you will put them on, why that will be all right.

The Court: Very well. He has promised to put them on and that will be better than her estimate.

Mr. Noell: That is right.

Q. Were you dependent upon him for support, Mrs. Stewart?

A. Most surely. I was his wife. Sure, I had no one else to meet my bills.

Q. You did not have any other income? A. How?

Q. You did not have any other income?

A. No, sir.

Mr. Davis: That is immaterial, Your Honor.

Mr. Noell: Well, she must be dependent.

The Court: Go ahead.

[fol. 89] Q. Now, I will get you to state what you noticed or when was it that you learned that Mr. Stewart was injured, about what time that day or night?

A. It must have been about 6:30.

Q. In the evening; and did you see him shortly after that?

A. Well, just as soon as we could get ready and get down there, some of the boys weren't home, and they were going to take me down.

Q. What condition did you find him with reference to conscious pain, suffering, if any?

A. Well, he was very distressed, and like anyone else would, with the loss of an arm, that had gone through all he had, and he was very nervous.

Q. Was he conscious when you saw him?

A. Yes, sir.

Q. And how much of the time did you see him before he died, during the days that followed?

A. Well, we was with him all that we could possibly be with him, that was most of the time.

Q. State whether or not he suffered any conscious pain during the times you saw him?

A. Well, from the expression of his face and the way he tried to talk, and all, to explain to us, he was just that afraid that we would touch the bed, or touch anything per-[fol. 90] taining to the bed that would cause him pain.

Q. About what time did he die?

A. About 9:30, or something like that.

Q. About 9:30?

A. About 9:30 or something in that time, I think.

Q. With reference to the day he was hurt what time did he die, was it the same day?

A. No, he was hurt Friday evening and he died Sunday evening.

Q. He died Sunday evening? A. Yes, sir.

Q. About 9:20? A. Yes.

Q. I believe you were, you have been appointed administratrix? A. Yes, sir.

Mr. Noel: I believe that is all.

### Cross-Examination.

By Mr. Dayis:

Q. Mrs. Stewart, what time was it when you first saw him, about 6:30 on February 12th, the day he was injured?

A. No. It was later than that, it was about that time that they came to notify me.

Q. Well, when did you see him?

A. Just as I told you.

Q. Well, what time I mean.

A. As soon as we could get there.

The Court: He wants to know about what time in the evening, about how much longer it was after that.

[fol. 91] A. Why, I judge forty minutes.

Q. Forty minutes.

A. At that time I was in—well, worked up, that I don't remember exactly.

Q. No, no, you do not remember the exact time but as near as you remember, then, it was somewhere around 7:30, would you say that?

A. About that time, yes.

Q. About 7:30? A. About that time.

Q. Where was he at that time?

A. He was at St. Mary's Hospital.

Q. And where was he—did you see where he was injured?

A. I seen as much as I could see. They had it all bandaged up.

Q. Had it been bandaged up? A. Yes.

Q. Was his hand on at that time?

A. Was his hand on?

Q. Yes.

A. Well, I do not see how it could be on when it was amputated, or took off and was bandaged up.

Q. It had already been amputated, had it?

A. Yes, sir, it had the first day.

Q. That is what I want to know. Where was it amputated, do you know, up near the elbow?

A. It looked the way it was wrapped like it was below the elbow.

Q. But I say, up near the elbow?

A. Near the elbow, yes, sir.

[fol. 92] Q. About how far from the elbow, do you know?

A. Well, now I could not tell from the amount of bandage they had on there, I could not tell you.

Q. You could not tell, I see.

Q. Now, Mrs. Stewart, he drank, did he not, Mr. Stewart?

A. Well, he was a moderate drinker, yes.

Q. Well, he was off a great many days because of drinking, was he not? A. I could not say that.

Q. Well, he was off some days because of drinking, was he not?

A. Not every time that a man lays off from work does he lay off from drinking.

Q. Oh, no. There were times he did lay off, from drinking, was there not?

A. He might lay off a day, but you don't have to be drunk all day because you lay off a day.

Q. But he laid off because of drinking?

A. Well, I could not say that.

Q. You could not say that? A. No, sir.

Q. Didn't you tell the doctor that he had been a heavy drinker and that he did not work because he was drinking?

A. No, sir.

Q. You never told the doctor that? A. No, sir.

Q. He had been off a few days previous to this time, did he not?

[fol. 93] A. He did because we moved, and he did the helping of the moving. We looked for a house and packed and moved, straightened our things up after we moved.

Q. Where were you living?

A. We were living on St. Louis Avenue, and we moved right around the corner on Sixteenth.

Q. Around the corner on Sixteenth; and did you have a moving van?

A. Well, we did not have our own furniture.

Q. You did not have?

A. We lived in a furnished apartment at that time.

Q. You were; where you were living before you moved was a furnished apartment, wasn't it?

A. Yes, sir.

The Court: It is now just the usual time for the noon recess.

Mr. Davis: All right.

The Court: I will announce a recess until 2:00 o'clock.

At this point, 12:30 P. M., Friday, June 9, 1939, a recess was had until 2:00 o'clock P. M.

After recess, at 2:00 o'clock P. M., Friday, June 9, 1939, the following proceedings were had:

[fol. 94] The Court: You may proceed with the case on trial.

#### Cross-Examination (Resumed).

By Mr. Davis:

Q. Mrs. Stewart, you said your husband was sixty years of age? A. Yes, sir.

Q. At the time of his death? A. Yes, sir.

Q. When was his birthday, when would he have been sixty-one?



A. He would have been sixty-one in August.

Q. In August, what day in August? A. The 4th.

Q. The 4th of August. Now, Mrs. Stewart, you were appointed administratrix of the estate of your deceased husband, John R. Stewart, on the 16th day of April, 1937, were you not? A. Yes, sir.

Q. And that was by the Probate Court of St. Clair County, Illinois, at Belleville, Illinois?

A. Belleville.

Q. Yes. And how long had your husband—I have overlooked asking you this question. How long had your husband been working for the Southern Railroad at the time of his death? A. For twenty years, I judge.

Q. Twenty years? A. Yes, sir.

Q. Had he ever worked for any other railroad?  
[fol. 95] A. During that time?

Q. No, not during that time, before?

A. Oh, he had worked for the railroad company ever since he was sixteen or seventeen.

Q. Sixteen or seventeen years of age. Now, on November 30th, 1937, you presented a petition to the Probate Court of St. Clair County, Illinois, to be permitted to settle this case, did you not?

Mr. Hay: Just a moment, Your Honor. That goes into the other phase of this case about which there was no interrogation of the witness on the stand.

The Court: Read the question.

(Question read.)

The Court: Sustained.

Mr. Davis: Your Honor, I understand the rule if we desire to examine her about that she may be our witness to that effect?

The Court: Well, that is true, you make her your witness.

Mr. Davis: To that extent only.

The Court: You have a right to make her your witness, yes. As a matter of orderly procedure, I do not know that you have a right to do it at this time.

Mr. Davis: Sir?



[fol. 96] The Court: I do not know that you have a right to do it at this time, as a matter of orderly procedure you make her your witness in the presentation of your own case, you have that right. I do not think you necessarily have a right to make her your witness at this time.

Mr. Davis: Well, we are not going to do that, Your Honor, but I will ask that this be marked Defendant's Exhibit No. 1, and that this be marked Defendant's Exhibit No. 2, and that this be marked Defendant's Exhibit No. 3.

(Certain papers were marked by the reporter as Defendant's Exhibits Nos. 1, 2 and 3, respectively.)

Q. Mrs. Stewart, I will show you Defendant's Exhibit No. 1, and ask you if that is your signature to it?

Mr. Hay: That goes into the same matter, Your Honor.

The Court: The objection will be sustained.

Mr. Hay: As a matter of orderly procedure we insist on following the proper procedure.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Davis: I think that is all, Your Honor.

Mr. Noell: That is all.

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[fol. 97] MRS. MINNIE HAMM, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

#### Direct Examination.

By Mr. Noell:

Q. Please state your name? A. Minnie Hamm.

Q. Where do you live?

A. 1521 Gaty, East St. Louis.

Q. What is your husband's name?

A. Henry Hamm.

Q. I wish you would state what time you got to the hospital after your father was injured—oh, I said your father. I assume you are a daughter of John R. Stewart, deceased? A. Yes, sir.

Q. What time did you get there?

A. It was a little after 6:00, I guess. I do not remember exactly.

Q. You received some notice that he had been injured?

A. Yes. His arm was all bandaged, and we knew of course what had happened.

Q. Did you go down by yourself or with somebody else?

Mr. Hay: A little louder.

Q. Talk louder so the gentleman at this end can hear you. I am standing back here so that we can hear you.

A. My mother and I went.

Q. Please tell the Court and jury what you saw and know with reference to his suffering conscious pain?

[fol. 98] A. Well, my dad was in pain, of course, and he had already been taken care of by first aid. They had taken the remainings of his arm off, you know, as soon as they could before they give him further treatment.

Q. A little louder.

A. It was heavily bandaged, of course, after this first aid treatment they had given him and he was in very much pain.

Q. Now, when did he pass away, what hour and day did he pass away?

A. That was Friday evening, and he passed away Sunday evening, Sunday night, rather, about 9:20.

Q. State what portion of that time he was conscious, to your knowledge?

A. Well, about all of the time we were there, as much as we could, and all of that time he was conscious.

Q. What was he doing and saying during that time you saw him?

A. Well, his pain was so intense that he just talked, intervals it seemed like he would be talking to us and then his mind would go so strongly toward his arm he could not continue his subject, he would just sit and close his eyes, you know, just as if the pain was so strong he could not remember.

Mr. Davis: We object to what it looks like.

The Court: Sustained.

The Witness: Well, it seemed that way.

[fol. 99] Mr. Davis: We object to what it seemed.

The Court: Sustained.

Q. What position did you place his expression on his face during the time you mentioned with reference to it showed very much pain?

Mr. Davis: We object to that question.

The Court: Read the question.

(Question read.)

The Court: Sustained.

Q. Did he have any expression on the face [—] denoted, that you observed, that indicated any conscious pain?

Mr. Davis: We object to that. That is a conclusion.

The Court: Well, there ought to be some form.

Mr. Davis: Yes. I think there is a form.

The Court: In which that question can be asked. I think perhaps it is in improper form.

Sustained.

Q. What audible sounds, if any, did he make with his voice?

A. Groaned and moaned, and as anyone would that were in pain and agony.

Mr. Davis: Wait a second. He did not ask anything further. Excuse me, please, may it please the Court.

The Court: Sustained as to anything further.

Mr. Noell: As to groans and moans, the Court's ruling [fol. 100] is that that may be—

The Court: That may stand, yes.

Q. Do you remember when his arm was amputated?

A. The following day, in the afternoon, around 3:00 o'clock.

Q. Was there any part of his arm taken off the first night or day?

A. Just a part of it that had been—

Mr. Davis: I do not understand.

A. Just the part that had been so torn, which just had to be taken off.

Q. What part was that?

A. Well, just, I would say that mid-section.

Q. You indicated now to me between the elbow and—

The Court: She indicates the mid-section of the forearm, do you not?

A. Yes. Yes, sir.

Q. What was the condition of your father's health before this accident? A. It was good.

Q. About how heavy a man was he?

A. I judge around 165.

Q. And about how tall?

A. Five foot seven, maybe eight. I would not be sure.

Mr. Noell: I believe that is all.

#### Cross-Examination.

By Mr. Davis:

[fol. 101] Q. Now, you got there at what time on the night of his injury?

A. I said around 6:20, didn't I, 6:30?

Q. That you got over there? A. Yes, sir.

Q. To the hospital? A. Yes, sir.

Q. And you say they had amputated part of his arm at that time?

A. No. They just cleared the tear, probably, I guess that is what you would call it.

Q. Cleared the tear?

A. Well, it was caught in the car, you know.

Q. Yes.

A. And it was hanging there when they took him to the hospital. Naturally they had to cut the remains beneath off, that is what was off.

Q. And it showed at that time that it was crushed about halfway between the wrist and elbow, is that it?

A. It was practically cut in two.

Q. Between the wrist and elbow? A. Yes.

Q. That is where it was cut in two, between the wrist and the elbow? A. Yes, sir.

Q. The hand was not injured, was it?

A. Well, it might as well been, it was not there, if you get what I mean. I am not being sarcastic; it was just so near that it was not any use to him.

Q. I say, the hand itself.

A. No, sir, the arm was caught.

[fol. 102] Q. The arm was caught, as you say, halfway between the elbow and the wrist? A. Yes.

Q. And the hand was still there when you first saw it?

A. I did not see it. I said it was taken off when we got there, and a bandage on.

Mr. Davis: That is all.

### Redirect Examination.

By Mr. Noell:

Q. Just one other question. What did you notice with reference to hemorrhages of the wound?

A. Let's see. Well, that night I believe it was heavily bandaged, as far as I remember, there were spots of blood showing through, because it was right after it happened.

Q. And then during the next two or three days what did you notice?

Mr. Davis: Now, Your Honor, that question is limited, if he limits it to two days.

Q. Make it two days.

A. Well, all the time I was there they were changing and changing these bandages. They just soaked through with this blood that kept coming to the top, you know, it just kept showing up.

Q. What effect did you notice it had on his strength?

A. Well, it naturally kept ebbing his strength that he did have.

[fol. 103] Mr. Davis: We object to that. I do not think she is a physician, and she cannot tell, and I ask that it be stricken out.

The Court: Sustained.

Mr. Hay: I should not think it would take much of an expert to determine that.

Q. I will ask you this question. Did he appear to grow weak? A. Yes, he did.



Mr. Davis: We object to the same question.

The Court: I could not hear counsel's question.

Mr. Noell: I say, did he appear to grow weaker?

Mr. Davis: We object to it as a conclusion of the witness.

Mr. Noell: Become more weak until the last day.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Noell: Now, you may answer. The Court has ruled.

The Witness: Yes, sir. He did.

Mr. Noell: That is all.

Mr. Davis: That is all.

Mr. Noell: Will you mark this, please, as plaintiff's Exhibit "B"?

[fol. 104] (A paper was marked by the reporter as Plaintiff's Exhibit "B".)

Mr. Noell: I would like to introduce in evidence Plaintiff's Exhibit "B", which is an authenticated copy under the Act of Congress of the Letter of Administration granted to Mary Stewart.

Plaintiff's Exhibit "B" Offered in Evidence.

(Said Plaintiff's Exhibit B is the Letters of Administration issued to Mary Stewart, and is the same as Exhibit A to the Second Amended Answer appearing at folio page 12 of this printed record, and is therefore omitted at this place to avoid duplication.)

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DOROTHY RUTH, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

## Direct Examination.

By Mr. Noell:

Mr. Noell: Will you mark this please, as Plaintiff's Exhibit "C".

(A paper was marked by the reporter as Plaintiff's Exhibit "C".)

Q. Will you please state your name?

A. Dorothy Ruth.

Q. Where do you live?

A. 1370 North 31st Street.

Q. What is your occupation? A. Nursing.

The Court: Wait. North 31st Street?

A. East St. Louis.

Q. What is your occupation?

A. Nursing, registered nurse.

Q. Did you have occasion to nurse John R. Stewart [fol. 105] along about February, 1937? A. I did.

Q. Where was that at?

A. St. Mary's Hospital, East St. Louis.

Q. Do you remember the date and the hour that you first saw him as a nurse?

A. It was St. Mary's Hospital at East St. Louis, February 12th, and he was admitted at 6:40.

Q. And what time did you see him?

A. Eight o'clock.

Q. Eight o'clock that evening. What condition did you find him in, Miss Ruth?

A. The condition of Mr. Stewart when I reported on duty with him, he was very nervous and worrying about his condition; and complained of [a] considerable pain.

Q. Was he conscious? A. Yes, sir.

Q. Was he conscious all the time that you saw him?

A. He was.

Q. Describe the injury to his body that you found at that time.

A. Well, I never had any occasion to take the bandage off. The doctor had put it on in the emergency room, but it was a bandage on it at that time, it was saturated with blood.

Q. Were you on duty at 12:00 A. M.—well, you went on duty from 11:00 o'clock until when, Miss Ruth?

A. 11:00 to 7:00.

[fol. 106] Q. 11:00 to 7:00?

A. The second night. The first night I was on from 8:00 to 7:00.

Q. I see. Can you tell us, describe what noises he was making during the time you were his nurse?

A. Well, he did not seem to be noisy. He just complained of considerable pain and by his facial expression and worrying about his condition, was wondering whether his arm would have to be amputated further.

Q. Was the arm amputated after that?

A. As far as I can remember, oh, yes, after that it was, above the elbow.

Q. Did the arm ever discontinue hemorrhaging?

The Court: Wait, just a minute. You say the arm was amputated above the elbow?

A. Above the elbow the following day, the 13th of February, 3:00 P. M.

The Court: All right.

Q. Where was it taken off first, if you remember?

A. I do not quite remember, but I think it was underneath the elbow, and then the following day it was taken above the elbow.

Q. Yes. Did he ever discontinue hemorrhaging during the entire time that you were nursing him?

A. Not until after the amputation, there was a slight [fol. 107] oozing there, and a tourniquet was applied several times.

Q. You had difficulty, did you, to stop the flow of blood?

A. Not after applying the tourniquet, we had it there in readiness in case of emergency.

Q. As I understand you, he was conscious during the time that you nursed him? A. Yes, sir.

Q. Those two days? A. Yes.

Mr. Noell: That is all.

#### Cross-Examination.

By Mr. Davis:

Q. You saw him about eight o'clock, did you?

A. Yes, sir.

Q. Did you see his hand? A. No, sir.

Q. Where was the injury?

A. Well; I could not tell much where the injury was because we had no occasion of removing the dressings after they had been applied.

Q. Now, when the dressing was applied where did it extend to?

A. Up to about here (indicating).

Q. To about the middle between the wrist and the elbow? A. Yes, sir.

Q. And do you know what he died of? A. I do not.

Q. You do not know what he died of. He did die, did he? [fol. 108] A. Yes, sir.

Q. Were you there when he died?

A. Not at that time. I came on duty at 11:00 and he died at 9:20.

Mr. Davis: I think that is all.

One second, please.

Q. He had no other injury except to his arm, that was the only injury that you saw, was it?

A. That is all that I saw.

Mr. Davis: That is all that you saw.

The Court: You do not know if he had any other injury, though?

A. I do not.

#### Redirect Examination.

By Mr. Noell:

Q. One other question. The only thing, as I understand your testimony, he said was about his condition, worrying about his arm, is that correct?

A. Yes, sir. The first evening he talked more to me when I came on at 8:00 o'clock, and he was wondering whether they would have to amputate his arm any further, and he said he was wondering, he said he would not be able to go back to switching. Well, the only thing I could do was comfort him and told him not to worry about his condition at that time, that maybe they would give him an [fol. 109] easier job when he returned.

Mr. Noell: I believe that is all.

Mr. Davis: That is all.

MAY THORNTON, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

Direct Examination.

By Mr. Noell:

Q. Will you please state your name?

A. May Thornton.

Q. Where do you reside?

A. 1305 Cleveland Avenue, East St. Louis, Illinois.

Q. What is your occupation, Miss Thornton?

A. Nursing.

Q. Are you a registered nurse? A. Yes, sir.

Q. Did you have occasion to nurse Mr. Stewart, as one of his nurses, in February, 1937? A. I did.

Q. When was that, what date did you go on duty?

A. I went on February 14th at 9:00 A. M. and worked until 3:00 P. M.

Q. In other words, you were there on the last day that he lived? A. Yes, sir.

Q. Was he conscious?

A. Yes, he was conscious.

[fol. 110] Q. Do you know whether he suffered any conscious pain during that time?

A. Yes. I feel that he did.

Q. He did? A. Yes, sir.

Q. Just what did he say to indicate that he was complaining of conscious pain, or just what did he say, just describe to the jury what you recollect.

A. Well, in conversation he did not say anything. He was restless, tossed around the bed covers, could not be comfortable, and just miserable, wholly, in general.

Q. Just describe what sounds he made, if any.

A. Well, he groaned some, and he moaned, and he was muttering, kind of talking. I could not make out just what he said, but the way he changed and shifted his position, why I felt that he was uncomfortable.

Mr. Davis: Well, now, not what you felt. Excuse me, if the Court please.

The Witness: I beg pardon?

Mr. Davis: Not what you felt, what he did.



The Witness: All right. Well, he was restless, and moved around the bed and could not, apparently, get comfortable at all. He was just miserable.

Mr. Noell: Now, that was the day he died, was it?

A. Yes, sir, that is the day I was with him.

[fol. 111] Q. And you went off of duty on that day at—

A. 3:00 P. M.

Q. Of course, you do not know what happened after 3:00 P. M.?

A. I do not.

Q. Miss Fitzgerald, I believe, was subpoenaed, but she is ill and cannot attend court, is that your understanding?

Mr. Davis: Well, now that is wholly immaterial, Your Honor. I think.

Mr. Noell: Well, we would like to show that the other nurse is ill. She has been subpoenaed but she can't be here because she is ill.

I would like to show that by this witness, to explain her absence.

The Court: Very well.

Q. Do you know that? A. I do.

Mr. Noell: That is all.

Mr. Davis: That is all.

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Mr. Noell: We would like to read in evidence this stipulation.

(The stipulation referred to is marked Plaintiff's Exhibit "C".)

Mr. Noell: We desire to read in evidence, omitting the caption, this stipulation, which is as follows:

[fol. 112]

(Plaintiff's Exhibit C.)

"Stipulation.

It Is Hereby Stipulated And Ageed by and between the Parties hereto, that at the time mentioned in plaintiff's petition and on the track mentioned in plaintiff's petition,

namely, Track No. 12, there were seventeen (17) cars and that twelve (12) of them at the time were moving an interstate commerce.

The above stipulation may be read or used at the trial in the case of Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, Plaintiff, versus, Southern Railway Company, a corporation, defendant, now pending in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CHAS. P. NOELL,

Attorney for Plaintiff.)

S. B. McPHEETERS &

KRAMER, CAMPBELL, COSTELLO  
& WIECHERT,

Attorneys for Defendant.

Mr. Noell: That is the plaintiff's case, Your Honor.

Plaintiff rests.

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(Here ensued a colloquy between Court and counsel, out of the hearing of the jury.)

The Court: Let the record show that plaintiff's counsel requested that the case be reopened to hear this one additional witness, and it is granted.

[fol. 113] Henry Martin, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further on behalf of the plaintiff, as follows:

#### Direct Examination.

By Mr. Noell:

Q. Does the Southern Railway Company operate passenger trains here in St. Louis?

A. Yes, sir.

Mr. Davis: We object to that unless he knows, absolutely knows.

The Court: Maybe he does not know. We will find out.

The Witness: Yes, sir.

The Court: What is he, an engineer, isn't he?

Mr. Noell: He is an engineer.

Q. How long have you been working for the Southern?

A. January, 1900, until—

The Court: I do not care how many years they have operated. Let's find out.

Mr. Noell: Yes. On February—when is the date this suit was filed? The commencement of the suit is the time that is pertinent.

Q. On April 20, 1937, when this suit was commenced, [fol. 114] was the Southern Railway Company operating trains in and out of the Union Station?

Mr. Davis: If you know.

The Court: Yes. Don't answer if you do not know.

A. I do not know.

Mr. Davis: That calls for a conclusion, may it please the Court.

Mr. Hay: Yes. I think he ought to describe accurately the movement of the train, Your Honor, and be sure that they are running when they are running.

Mr. Sheppard: Your Honor, counsel just does not understand. This is not a technical objection. This objection has real merit to it.

The Court: I understand.

Mr. Hay: Yes. I understand.

Mr. Sheppard: You do not. You do not understand at all.

The Court: Read the question.

(Question read.)

The Court: Do you mean the City of St. Louis, Missouri?

Q. In the City of St. Louis, Missouri?

A. I do not know.

Mr. Noell: Well, then, we will have to subpoena the [fol. 115] general agent and put him on. He ought to know.

Sit down, Mr. Martin. I will call another witness here. Maybe he might know.

The Court: You may step down, Mr. Martin. You are excused.

(Witness excused.)

Mr. Noell: This gentleman here (indicating to a person) will you come forward? I believe you are an employee of the Southern.

I might put Mr. Davis on. He ought to know that. He is up there at Union Station.

Mr. Sheppard: Suppose you do that.

THOMAS RUSSELL, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

Direct Examination.

By Mr. Noell:

Q. State your name. A. Thomas Russell.

Q. Where do you live?

A. 564 North 14th Street, East St. Louis.

Q. Do you know whether or not the Southern Railway Company operates trains into Missouri, St. Louis, Missouri?

A. I do not.

Q. You do not.

Step aside.

[fol. 116]

Cross-Examination.

By Mr. Davis:

Q. Let me ask you one question. You were the fireman on the train that, at this time that Mr. Stewart was injured?

A. No, sir.

Q. You were not? A. I was a switchman.

Q. You were a switchman? A. Yes, sir.

Q. And were you working with Mr. Stewart at that time?

A. Yes, sir.

Q. Now, do you know anything about this accident yourself?

A. No, sir.

Mr. Davis: That is all I wanted.

Redirect Examination.

By Mr. Noell:

Q. You were about twenty-five car lengths away?

A. Yes, sir.

Mr. Noell: That is all.

(Witness excused.)

Mr. Noell: Well, do you admit that you operate trains here?

Mr. Lucas: No.

Mr. Noell: You do not operate any passenger trains?

Mr. Sheppard: We do not admit we operate any passenger trains into St. Louis, the Southern Railway.

[fol. 117] Mr. Noell: You do not admit that?

Mr. Sheppard: No, sir.

Mr. Davis: Get the facts. We will admit the facts. I know what I have heard.

Mr. Lucas: It is all hearsay, what I know.

Mr. Noell: Where is Mr. Haun, the claim agent?

Mr. Sheppard: I do not know. He was here a minute ago.

Mr. Davis: We can call him, if you desire.

H. B. HAUN, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, as follows:

Direct Examination.

By Mr. Noell:

Q. Please state your name. A. H. B. Haun.

Q. What is your occupation?



A. I am claim agent for the Southern Railway Company.

Q. Where does the Southern Railway Lines extend westwardly to eastwardly?

A. We extend westwardly to the Mississippi River at three points, St. Louis, Memphis and New Orleans.

Q. How many trains a day does the Southern Railway Company operate out of St. Louis, Missouri?

Mr. Hay: Wait a minute.

[fol. 118] A. We do not operate any out of here.

Q. Do you do business in St. Louis, Missouri?

Mr. Sheppard: Oh, now, Your Honor, that calls for a legal conclusion.

The Court: Sustained.

Q. What business do you do in St. Louis, Missouri?

A. I do not do any. My office is on the East side. I live on this side.

Q. Does any of your equipment come over in passenger trains?

A. Yes, sir.

Q. And that is hauled by Terminal engines?

A. Yes, sir, on Terminal rails.

Q. On Terminal rails? A. Yes, sir.

Q. And your equipment is Southern Railway coaches and pullman cars?

A. Well, it is so stenciled on the side of the cars.

Q. And the conductor on that train is an employee of the Southern Railroad Company?

A. Yes, sir.

Q. And the flagmen of those trains are employees of the Southern Railway, is that correct?

A. Yes, sir, and under the jurisdiction of the Terminal Railroad while on their rails, subject to their rules and regulations, as I understand it.

Q. Do you have ticket offices here in St. Louis?

[fol. 119] A. I do not know where it is.

Mr. Davis: Well, even if they do, that is not a question of doing business or of operating; the courts have so held, as I understand, ticket offices.

Q. Just state what offices you have in St. Louis, Missouri?

Mr. Davis: Well now I do not object to that.

The Court: All right then, we will have an answer.

A. Well, we have a Mr. Hughes, who is rated as superintendent of Terminals, whose office is in the Chemical Building on Olive Street; and we have some other kind of office in that same building, just the nature of it I am not acquainted with. It is aside from my department. I have no dealings with it.

Q. About how many passenger trains do you operate in and out of Union Station?

A. Do not operate any in and out of Union Station, St. Louis, Missouri.

Q. Where do you operate them from St. Louis, Missouri? A. We do not.

Q. Where do the passengers get on your trains to go to the Atlantic Seaboard and points east?

A. Well, there is fifteen states they get on our train.

Q. In St. Louis where do they get on your train?

A. At Union Station.

[fol. 120] Q. Yes. And they get on the Southern Railway equipment, do they? A. It is so stenciled.

Q. And that conductor and flagman on that train continue on that train for how many hundred miles before they are relieved?

A. Well, the conductor I think goes to Louisville, Kentucky.

Mr. Noell: Yes. That is all.

Mr. Davis: That is all.

(Witness excused.)

Plaintiff Rests.

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Mr. Sheppard: Now, the record will show now that we move for a directed verdict, that we file our motion for a directed verdict.

The Court: Very well.

At this point, the defendant, by its counsel, filed with the Court, in writing, its motion for a directed verdict, in words and figures as follows, to-wit:

(Motion of Defendant for Directed Verdict.)

(Omitting formal caption)

"At the close of plaintiff's evidence and case, the defendant herein, Southern Railway Company, moves the Court to direct the jury to find a verdict in favor of defendant and against plaintiff, for the reasons following:

1. That under the applicable rules of law, there was [fol. 121] and is no substantial evidence adduced in this case showing or tending to show that defendant herein was or is guilty of any actionable negligence or want of duty whatever as charged in the petition.

2. That under the applicable rules of law, there was and is no substantial evidence adduced in this case that any actionable negligence or want of duty whatever of defendant was and is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

3. That under the applicable rules of law, there was and is no substantial evidence whatever in this case showing or tending to show any violation of any duty as charged in the petition.

4. That under the applicable rules of law, plaintiff cannot recover in this case, because the substantial evidence herein unequivocally shows that plaintiff filed in the Probate Court of St. Clair County, Illinois, a petition, duly signed and verified by her, praying that, as administratrix of the Estate of John R. Stewart, deceased, the said Probate Court order that, as such administratrix, she be allowed, for the sum of Five Thousand Dollars, in full settlement of all claims and demands on account of the fatal injuries to John R. Stewart, deceased, to accept said sum of money, and to execute and deliver to said defendant a release in writing, fully releasing, settling and satisfying all claims, demands and rights of every kind, nature and description which she, as such administratrix of said estate, had on account of the fatal injuries to said

deceased; that said petition was presented to said Probate Court and said Probate Court entered an order approving said settlement for Five Thousand Dollars and authorized her, as such administratrix, to settle said claim with defendant and to execute and deliver to said defendant a full and complete release upon the payment of said sum of money; that in consideration of the execution of a full and complete release by her, as such administratrix, the defendant herein paid her the sum of Five Thousand Dollars, as such administratrix, and, as such administratrix, she executed and delivered to defendant a release, thus, releasing and discharging defendant from all claims, demands, actions, and rights of action that she then had or might thereafter have, as such administratrix, against defendant by reason of the fatal injuries to John R. Stewart, deceased, and specifically accepted the sum of Five Thousand Dollars in full settlement of this cause of action [fol. 123] and appropriated the said sum of money to her own use as such administratrix; that thereafter she filed a petition in said Probate Court of St. Clair County, Illinois, and moved said Court to set aside the settlement of said claim and cause of action herein, which said petition, to set aside the settlement and approval of settlement for fatal injuries to her decedent, the said Probate Court of St. Clair County, Illinois, denied. On these facts, the defendant moves the Court to direct the jury to find a verdict in its favor, because, as the authority of plaintiff to settle as such administratrix or the settlement thereunder had not been revoked or set aside by the Probate Court, or some other court of competent jurisdiction in Illinois, if any, this cause of action is a collateral attack on the orders and judgments of said Probate Court of St. Clair County, Illinois; of all of which aforesaid matters only the Probate Court of St. Clair County, Illinois had full jurisdiction.

5. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant, its agents or servants was or is guilty of any actionable fraud whatever.

6. That under the applicable rules of law, there was [fol. 124] and is no substantial evidence in this case show-



ing or tending to show that defendant was or is guilty of any actionable duress whatever.

7. That under the applicable rules of law, there was and now is no substantial evidence in this case impeaching or tending to impeach the execution by the plaintiff of the release offered in evidence in this case.

8. That under the applicable rules of law, there was and now is no substantial evidence in this case showing or tending to show that there was any fraud or duress whatever in the matter of the execution of the release offered in evidence, nor is there any substantial evidence showing or tending to show that the plaintiff, at the time she executed the release in question did not know that she was executing a full release, discharging the defendant from all claims, demands, actions or rights of action that she then had or might thereafter have as such administratrix against the defendant by reason of the fatal injuries to her intestate.

Wherefore defendant respectfully asks that the Court may hold as above specifically prayed and direct the jury to return a verdict in favor of defendant.

**SOUTHERN RAILWAY COMPANY,**

By Wilder Lucas,

Arnot L. Sheppard,

Walter N. Davis,

Its Attorneys of Record."

[fol. 125] Which said motion was by the Court marked "Overruled".

And to which action of the Court in refusing the said motion, the defendant, by its counsel, then and there at the time duly excepted.

The Court: Unless it is a very great hardship on some member of the jury, I prefer to continue in this case through tomorrow morning until the usual hour of adjournment at 12:30.

If it is any very great hardship on any juror I will consider what he has to say; otherwise I will announce now we will run through until 12:30 tomorrow.



Very well, gentlemen, we will continue through until 12:30 tomorrow.

No juror will be heard to complain hereafter.

And thereupon, the defendant, to sustain the issues in its behalf, offered the following evidence:

R. H. WIECHERT, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, as follows:

Direct Examination.

By Mr. Davis:

Q. Mr. Wiechert, won't you please state your name?

A. R. H. Wiechert.

[fol. 126] Q. And what is your profession? A. Lawyer.

Q. Are you a member of any firm?

A. Of the firm of Kramer, Campbell, Costello and Wiechert at East St. Louis.

Q. And are you attorneys for the Southern Railway at East St. Louis?

A. Yes, sir. We are attorneys, division counsel for the Southern Railway Company.

Q. Where does your division,—does that include St. Louis? A. That includes Illinois and Missouri.

Q. Now, do you know Mr. or Mrs. Stewart?

A. I met her once.

Q. And when was that?

A. On November 30, 1937.

Q. Generally what was the occasion of your meeting with her? A. She and her daughter—

Q. No, just generally the occasion, for what purpose?

A. For the purpose of putting through a settlement on account of the death of her husband.

Q. Now, did she execute a settlement?

A. Execute a what?

Q. A settlement? A. Yes, she did.

Q. A release. I will ask you if that—this is Defendant's Exhibit 3 here. I will ask you if that is the release, or whose signature is that to that release?

A. That is Mrs. Stewart's signature.

[fol. 127] Q. I will ask you, or I will show you Defendant's Exhibit No. 2, and ask you what that is.

A. That is a voucher given to her in payment of the settlement and release.

Q. What case, of the case of Mary Stewart versus the—

A. The Southern Railway Company.

Q. Pending in the United States District Court.

A. In this court.

Q. Of St. Louis, Missouri? A. Yes, sir.

Q. Do you know whose signature that is on the back of that part of Exhibit No. 2?

A. I presume that is Mrs. Stewart's signature, but I was not present when that signature was put on the back.

Q. I will show you Defendant's Exhibit No. 1, and ask you whose signature that is to that instrument?

A. That is the signature of Mrs. Stewart, Mary Stewart.

Q. And I will ask you generally what that is.

A. That is a petition to the Probate Court of St. Clair County, Illinois.

Q. Of Mrs. Mary Stewart?

A. Of Mrs. Mary Stewart, of Mary Stewart, rather.

Q. Asking to be permitted to settle the case in the matter of John R. Stewart against the Southern Railway?

A. Well, asking for the approval of the court in the [fol. 128] settlement of that case.

Mr. Davis: Now, may it please the Court, we offer Defendant's Exhibit Nos. 1, 2 and 3 in evidence.

The Court: Very well.

Mr. Hay: May I see this.

Mr. Noell: No objection.

Mr. Davis: Gentlemen, I will read this.

Defendant's Exhibit No. 1.

"In the Probate Court of St. Clair County, Illinois.  
In the Matter of

the Estate of John R. Stewart, Deceased.

To the Honorable Paul H. Reis, Judge of Said Court:

Your petitioner, Mary Stewart, respectfully represents that she is the widow of John R. Stewart, deceased, and is

by appointment of this Honorable Court administratrix of the estate of said deceased, and that said deceased was injured on February 12, 1937, in his employment as a switchman for the Southern Railway Company, from which injuries he died on the 14th day of February, 1937, and that at the time of said injuries said deceased and the said Southern Railway Company were engaged in interstate commerce.

Your petitioner further represents that the said Southern Railway Company has offered and agreed, provided a [fol. 129] a full and complete release can be obtained, to pay to your petitioner as such administratrix aforesaid the sum of Five Thousand Dollars (\$5,000.00), in full settlement of all claims and demands on account of said fatal injuries to said deceased.

Your petitioner further represents that it is for the best interests of said estate and all persons interested therein to make said settlement, and prays that an order be entered in this court approving this settlement as aforesaid and authorizing and directing petitioner, as administratrix of said estate, to make said settlement, and upon payment to her of Five Thousand Dollars (\$5,000.00) to execute and deliver to the said Southern Railway Company a release in writing, fully releasing, settling, satisfying and determining all claims, demands, and rights of action of every kind, nature and description which she as such administratrix of said estate has on account of the fatal injuries to said deceased.

Petitioner further represents that one Charles P. Noell, whose business address is 1502 Telephone Building, in the city of St. Louis, Missouri, claims to have a lien for attorney fees out of any amount which petitioner receives, or is to receive, in settlement of her claim for the death of said deceased against said Southern Railway Company, [fol. 130] and petitioner further represents that any such lien which the said Charles P. Noell may claim is null and void and of no force and effect, and that said Charles P. Noell is not entitled to attorney fees or any lien for attorney fees on said settlement.

Petitioner further prays that an order be entered by the Court herein directing the Clerk of this Court to serve

notice upon the said Charles P. Noell to appear in this cause by a short day to be fixed by the Court, to assert and present his claim, if any, for attorney fees, or lien for attorney fees against this petitioner arising out of said settlement.

Dated this 30th day of November, A. D. 1937.

(Signed) MARY STEWART,  
Administratrix of the Estate of  
John R. Stewart, Deceased.

State of Illinois,

County of St. Clair.—ss.:

Mary Stewart, after being duly sworn, upon her oath deposes and says that she is Administratrix of the Estate of John R. Stewart, deceased, and petitioner in the above and foregoing petition, and that she has read said above and foregoing petition and that the facts therein stated are [fol. 131] true and correct.

(Signed) MARY STEWART, )

Subscribed and sworn to before me this 30th day of November, A. D. 1927.

(Signed) L. O. REINHARDT,  
Clerk of The Probate Court.

#### Defendant's Exhibit 2.

Department No.....	For Auditor's Use Number—3451
	Month November
Southern Railway Company	Year 1937
To Mary Stewart Admx of the estate of John R. Stewart Deceased and A. R. Felsen Att'y	File No.....

.....  
East St. Louis, Illinois.  
.....

---

For amount in full settlement of all claims for Fatal injuries to John R. Stewart Dec'd person or property received at or near East St. Louis, Illinois, on or about the 12th day of February, 1937, and for all results attending

of following said injuries, including funeral expense and all other claims of whatsoever nature, also in full settlement of Suit brought by the said Mary Stewart Admx of the estate of John R. Stewart Dec'd vs. Southern Railway [fol. 132] Company in the U. S. District Court in and for the Eastern District of Missouri.

This settlement is made in accordance with order of the Probate Court of St. Clair County, Illinois, approving said settlement .....\$5150.00

<p>This Space For Treasurer's Use Credit Account H. B. Haun, Claim Agt. Draft No. 122 Dated 11-30 1937</p>	<p>) Which amount said Southern Railway ) Company hereby agrees to pay. And ) in consideration of said agreement ) to pay said sum of ..... ) Five Thousand One Hundred Fifty ) and 00/100 - Dollars ) them ) to / him, the said Mary Stewart, Admx ) of the estate of John R. Stewart de- ) ceased and A. R. Felsen, Att'y does ) hereby release and discharge the ) Southern Railway Company, and the ) Southern Railway Company ..... ) ..... and ..... ) .....from all claims, de- ) mands, actions and rights of action ) that he now has or may hereafter have ) by reason of said injuries and acci- ) dent, and also releases said companies ) from any obligation or requirement to ) take or retain him in employment or ) service in any position or capacity ) whatever. ) Given under my hand and seal, this ) 30th day of November, 1937. ) (Signed) MARY STEWART, ) Admx of the Estate of John (Seal) ) R. Stewart Dec'd ) Witness (Signed) MRS. WM. HAM, ) Witness (Signed) W. H. HAM. ) (Signed) ARTHUR R. FELSEN, Atty. (Seal)</p>
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[fol. 133] "Place Endorsements On Other Side of Voucher.

Received November 30th 1937, of the Southern Railway Company,

Five Thousand One Hundred Fifty and 00/100 Dollars  
100

in full for above account, in consideration of which I release and discharge said companies as above specified.

(Signed) MARY STEWART, (Seal)  
Admx of the estate of John R. Stewart Dec'd

(Signed) ARTHUR R. FELSEN, (Seal)  
Atty.

Witness (Signed) Mrs. W. Ham.

Witness (Signed) W. H. Ham.

Note.—The above receipt must be dated and signed by the payee of this Voucher; or, if signed by another, the authority for so doing must in all cases accompany the Voucher. The signature must be technically correct. Changes or erasures will invalidate the Voucher."

### Defendant's Exhibit No. 3

"No Protest Southern Railway Company No. 122

November 30th, 1937.

At Sight Pay To The Order Of

Mary Stewart Admx of the  
estate of John R. Stewart  
Dec'd and A. R. Felsen,  
Att'y

Five Thousand One Hundred Fifty and 00/100 Dollars

\$5150.00

In Full Settlement For All Claims and Damages Incident To fatal injuries sustained by John R. Stewart at or near [fol. 134] East St. Louis, Illinois, on or about February 12th, 1937, and for all results attending or following said injuries and in full settlement of Suit styled Mary Stew-

art Admx vs. Southern Ry Co U. S. District Court of St. Louis, Mo.

To:	) (Signed) H. B. HAUN,
Treasurer, Southern	)
Railway Company,	)
Washington, D. C.)	Claim Agent Southern Railway Company"

(Defendant's Exhibit No. 3 bears the following endorsements on the back)

"(Signed) Mary Stewart, Admx of Estate of John R. Stewart, dec'd.

A. R. Felsen, Atty."

Mr. Davis: May it please the Court, I desire to offer in evidence authenticated copies of the record of an order of the Probate Court and a petition of Mary Stewart for setting aside order authorizing settlement, and petition of the Southern Railway to intervene, and the order of the Probate Court with respect to the compromise, and the petition of Mary Stewart to set aside order of compromise, and the petition of Southern Railway to intervene, and the order of the Court on Mary Stewart's petition to set aside.

They are all pleaded and it is an authenticated copy of them.

Mr. Hay: We object to the introduction of these records, [fol. 135] Your Honor, as having no proper place in this case, as not bearing upon any issue to be tried in this particular proceeding, and I would like to be heard on that if Your Honor has any question about it, and perhaps inasmuch as there will be some discussion of it you might like to hear it without the hearing of the jury.

The Court: All right.

Announce a recess.

(Recess, twenty-five minutes.)

The Court: The objection is sustained.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

[fol. 136] Mr. Davis: (Addressing the witness). I think that is all, Mr. Wiechert, just at present; unless they want Mr. Reinhardt, will you come up?

Mr. Hay: Wait a moment. I want to cross examine Mr. Wiechert.

Let me have those documents.

### Cross-Examination.

By Mr. Hay:

Q. Mr. Wiechert, I believe you say that you are attorney for the Southern Railroad Company.

A. Yes, sir.

Q. You were at the time the transaction was had about which you have testified here? A. Yes, sir.

Q. And you were representing the Southern Railway Company in that transaction, were you?

A. Yes, sir. It is the Southern Railway Company.

Q. The Southern Railway? A. Yes, sir.

Q. That is what I mean. You were representing that company? A. Yes, sir.

Q. Was there any other lawyer at the time representing that Southern Railway Company?

A. Our whole firm represents the Southern Railway Company.

Q. Yes. How many are there in your firm?

A. We have four in the firm and two associates.

[fol. 137] Q. All of you represent the company?

A. Southern Railway Company, yes, sir.

Q. And did in this transaction?

A. Yes, sir.

Q. This transaction occurred in your office, did it not?

A. That is part of it.

Q. That is the part of the transaction that you testified to here occurred there in your office, or over in court following the conference in your office? A. Yes, sir.

Q. Had you ever met Mrs. Stewart before she came to your office? A. No, sir.

Q. What time of the day was it when she came?

A. I would say it was about 9:30, 10:00 o'clock, somewhere along there.

Q. Who came with her?

A. Her daughter, Mrs. Hamm, and her son-in-law, Mr. Hamm.

Q. Any lawyer? A. No, sir.

Q. Just her daughter, Mrs. Hamm, and Mr. Hamm?

A. Yes, sir.

Q. They came there about 9:30? A. Yes, sir.

Q. What time was the transaction in your offices completed? A. Shortly before 12:00.

Q. I see. What took place in your office?

[fol. 138] Mr. Davis: Now, Your Honor, this has nothing to do with the orderly procedure as they say, and this has nothing to do with the transaction—

The Court: Well, I don't know. I don't know whether it does or not as yet.

Mr. Hay: I will withdraw that part a moment. I will withdraw that part a moment and ask this question:

Q. This document numbered, or Defendant's Exhibit No. 1, the document Defendant's Exhibit No. 1, which is in the nature of a petition to the Probate Court over at Belleville, St. Clair County, I believe you say was signed by Mrs. Stewart? A. Yes, sir.

Q. Was that signed in your office?

A. No, sir. It was signed in the Probate Court Clerk's office.

Q. Was anything signed by her in your office?

A. No, sir.

Q. Who participated in the conference in your office?

A. Mr. Haun was in the office awhile, and Mr. A. R. Felsen, an attorney at East St. Louis.

Q. Well, who is Mr. A. R. Felsen in this transaction?

A. He is an attorney that has offices in the same building that we do.

Q. On the same floor?

A. No, sir, not on the same floor.

Q. But in the same building?

A. In the same building.

Q. Is he the gentleman that I note from this exhibit in the release is referred to as attorney for the administratrix? A. Yes, sir.

Q. Well, he did not come there with her, did he?

A. He did not.

Q. How did he get into the matter?

Mr. Davis: Well, Your Honor, it seems to me that this is going beyond any examination that we had.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. How did he get into the matter?

A. I called him to the office after Mrs. Hamm, or Mrs. Stewart agreed that he should represent her in the Probate Court.

Q. Did she know Mr. Felsen?

A. I think she did. She had met him before.

Q. Had she ever employed him before that?

A. Not that I know of.

[fol. 140] Q. Well, you knew that she did not employ him before that, didn't you?

A. I think that is true.

Q. You knew that she had employed Mr. Noell, didn't you? A. Yes.

Q. Who called Mr. Felsen?

A. That particular morning I called him.

Q. Who suggested that Mr. Felsen be called?

A. I did that morning.

Q. Whom were you representing?

A. I was representing the Southern Railway Company.

Q. And when you called Mr. Felsen to act as attorney for Mrs. Stewart, whom were you representing?

A. I was representing the Southern Railway Company, but it was by the consent of Mrs. Stewart that Mr. Felsen be called.

Q. And you suggested that Mr. Felsen be called, did you? A. Yes, sir.

Q. And that was during the time that you were negotiating a settlement with Mr. Stewart, with Mrs. Stewart in a case against the Southern Railroad Company?

A. I would not call it negotiating a settlement because she had agreed on the amount, and it was just a question of putting through the settlement and securing the release.

Q. When had she agreed on the amount?

[fol. 141] A. Prior to that time.



Q. Where? A. Her son-in-law—

Q. Now, just a moment. You told us a while ago that you never saw this lady but once, and that was the first time you saw her was in your office?

A. Yes, sir, on November 30th.

Q. Now, when did you learn from her that she had agreed on a settlement? A. That day.

Q. She came in on that day, and that was the first you knew about it?

A. That is from her; that is not—

Q. From her?

A. That is not the first I knew.

Q. But you first learned from Mr. Hamm, did you not?

A. Well, I learned it from Mr. Campbell, who had talked to Mr. Hamm some days previous to that time.

Q. Do you know how Mr. Campbell happened to get in touch with Mr. Hamm?

A. Yes, Mr. Hamm came to Mr. Campbell's office.

Q. Do you know who sent him there?

A. I think Mr. Howell.

Q. And who was Mr. Howell?

A. He was an attorney for the Terminal Railroad Association of St. Louis.

Q. And whom did Mr. Hamm work for?

A. The Terminal Railroad Association of St. Louis, so I am informed.

[fol. 142] Q. You learned that in the attempt to get a settlement out of this woman Mr. Howell, the attorney for the Terminal Railroad, had called her son-in-law, Henry Hamm, into his office to talk to him about the case, didn't you?

Mr. Davis: Now, we object to that question there in its entirety.

The Court: The objection is sustained as to the form of the question.

Mr. Hay: Very well.

Q. Did you learn, I believe you stated that Mr. Howell had sent Mr. Hamm over? A. Yes, sir.

Q. And he came to see Mr. Campbell?

A. Yes.

Q. And that Mr. Campbell then got in touch with you?

A. Well, his office and my office are right alongside of each other.

Q. Well, Mr. Campbell represents the Southern Railroad also? A. Oh, yes.

Q. He is one of your partners?

A. He is one of my partners, yes, sir.

Q. And the first you knew about it then was when Mr. Hamm, the son-in-law of Mrs. Stewart, came to you after, [fol. 143] as you had learned he had gone to see Mr. Howell, that is right, isn't it?

A. The first I knew about it, when Mr. Campbell told me Mr. Hamm had come to his office.

Q. Had come to his office? A. Yes, sir.

Q. What had transpired, of course, between Mr. Howell and Mr. Hamm, you do not know?

A. No, sir, I do not.

Q. But he came. Then, the next you knew, was when Mrs. Stewart was brought into the office?

A. Yes, sir.

Q. And you say the settlement had been agreed upon?

A. So I understood.

Q. Well, when did you understand that?

A. Previous to the time, after Mr. Hamm's conversation with Mr. Campbell.

Q. Yes. So that when she got there that morning you understood the settlement had been agreed upon?

A. Yes.

Q. And all that was to be done was to carry out the formalities of it? A. Yes.

Q. And you started into the conference at what time?

A. About, I would say 9:30, 10:00 o'clock.

Q. And broke up when?

A. Shortly before 12:00.

[fol. 144] Q. What were you doing all that time?

A. When Mrs. Stewart, and the Mr. and Mrs. Hamm came in the office, we sat down and discussed this, and there was a question of attorney fees.

I told her that the—we would see that she would be protected from the payment of any attorney fees to Mr. Noell, that we wanted to see her get the five thousand dollars free and clear to her as administratrix.

She wanted that matter with reference to the attorney fees in writing, and I told her that we would not put it in writing, that she would have to take our word as to that.

Then I explained to her that in putting through this settlement and release that we wanted the approval of the Probate Court, and I had the papers prepared, had prepared them beforehand, and I explained to her that we wanted her, we wanted an attorney to represent her in the Probate Court, and suggested that Mr. Felsen appear.

In the meantime I had called Mr. Haun in the office. His office is just adjacent to ours, and we had gone over this matter of the attorney fees and so forth, and settled that, then called Mr. Felsen into the office and explained the whole thing to him, and he asked Mrs. Stewart and Mr. and [fol. 145] Mrs. Hamm whether that was satisfactory, and they said yes.

He wanted to see the petition and order that was prepared, and the release, and he sat down and read those, and then he read them aloud to all of us there in the room so that Mrs. Stewart would know exactly what she had to sign, even read the order that I had prepared for the Probate Court, and after we got through with that, well, Mrs. Stewart took the papers and she read every paper, not out loud, but she took each paper individually and read them, and we told her that we would have to go to Belleville, and we then went to Belleville to the Probate Court.

Q. Now, let me ask you this: Did Mr. Felsen at any time have any talk with Mrs. Stewart not in your presence?

A. Not that I know of.

Q. Did he ever, so far as you know, have any talk with her with respect to the merits of this settlement?

A. Not that I know of.

Q. In other words, Mr. Felsen was employed upon your suggestion and called by you into this case, a lawyer selected by you for her, that is true, isn't it?

A. With the consent of Mrs. Stewart.

Q. Oh, yes, certainly.

[fol. 146] A. If she had objected to Mr. Felsen we would have called any lawyer that she suggested.

Q. So far as you knew, did she up to the time you prepared this settlement for her as representative of the

Southern Railroad Company, have any discussion with any counsel not selected by you?

A. Not that I know of.

Mr. Hay: That is all.

Mr. Davis: That is all for the present.

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LEONARD O. REINHARDT, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, as follows:

Direct Examination.

By Mr. Davis:

Q. Please state your name.

A. Leonard O. Reinhardt.

Q. And where do you live?

A. St. Clair County, East St. Louis, Illinois.

Q. And what is your business?

A. Clerk of the Probate Court, St. Clair County, Illinois.

Q. I will get you to look at Defendant's Exhibit 4, and just state what that is.

A. It is an order of the Probate Court, signed by the Judge, in the matter of the Estate of John R. Stewart, deceased.

[fol. 147] (The said document was marked by the reporter as Defendant's Exhibit No. 4.)

Q. Now, I will get you to look at Defendant's Exhibit No. 5, and state what that is, just generally?

A. It is a petition for settlement, setting aside order authorizing settlement in the matter of the Estate of John R. Stewart, deceased, filed in our court on December 10, 1937.

(The said document was marked by the reporter as Defendant's Exhibit No. 5.)

Q. And when was this Defendant's Exhibit 4 filed in court? A. Filed November 30, 1937.

Q. I will get you to look at Defendant's Exhibit 6, and state what that is.

A. That is a docket of the Probate Court of St. Clair County, Illinois.

(The said document was marked by the reporter as Defendant's Exhibit No. 6.)

Q. Docket of the Probate Court of St. Clair County, Illinois. A. No. B 768.

Q. And what estate does that represent, or relate to?

A. To the estate of John R. Stewart, deceased.

Q. Now, I will get you to state what Defendant's Exhibit No. 7 is.

A. It is a petition filed in the matter of the Estate of [fol. 148] John R. Stewart, deceased, filed January 31, 1938.

(The said document was marked by the reporter as Defendants' Exhibit No. 7.)

Mr. Davis: Now, may it please the Court, we offer Defendant's—this is already in evidence, Your Honor.

Q. I will ask you if you will look at Defendant's Exhibit No. 1, if that is your signature.

A. Yes, sir.

Q. To the affidavit to that petition? A. Yes, sir.

Q. And did Mary Stewart swear to that before you?

A. Yes, sir.

Q. And where did she sign it, if you know?

A. At the counter in the Probate Clerk's office, St. Clair County, Belleville, Illinois.

Q. And where is that located?

A. Belleville, Illinois.

Q. So she signed this Exhibit No. 1, Defendant's Exhibit No. 1 in Belleville, Illinois? A. Yes, sir.

Q. And before you there? A. Yes, sir.

Q. I will ask you what Defendant's Exhibit No. 8 is.

A. It is a letter from Charles P. Noell of St. Louis, Missouri, stating that he is enclosing a petition to be filed in [fol. 149] our court, and this was received on December 10, 1937.

(The said document was marked by the reporter as Defendant's Exhibit No. 8.)

Q. And I will ask you what Defendant's Exhibit No. 9 is.



A. That is an affidavit by Deputy May that he mailed a notice to Mr. Noell to the effect that the order had been entered in our court on the 30th day of November, 1937.

(The said document was marked by the reporter as Defendant's Exhibit 9.)

Q. As Clerk of the Court of St. Clair County, Illinois, are you in charge of the records of the Court?

A. Yes, sir.

Q. And of these exhibits, from Exhibit 4 to Exhibit 9, inclusive?

A. If those were the papers you showed me, I am custodian of those records, yes, sir.

Q. You are custodian of those records.

Mr. Davis: Now, if it please the Court, I offer in evidence Defendant's Exhibit 4, Defendant's Exhibit 5, Defendant's Exhibit 6, Defendant's Exhibit 7 and Defendant's Exhibit 8 and Defendant's Exhibit 9.

Mr. Hay: Pardon me. You are not including in that the petition?

[fol. 150] Mr. Davis: No.

Mr. Hay: That has already been offered.

The plaintiff objects to the introduction and reception into evidence of these exhibits for the reason that they are not competent or material or relevant to the issue being tried before this court, which has to do with the validity of the release itself, that being drawn in question under allegations of fraud and duress.

There is no issue here as to the question of authority of the administratrix to make a settlement, but the issue is as to the validity of this release which was executed.

The Court: The objection is sustained.

Mr. Sheppard: I understand it is not necessary to save exceptions under the new rules.

The Court: No. Exceptions save themselves.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

(By stipulation, photostatic copies of the documents heretofore identified as Defendant's Exhibits Nos. 4, 5, 6, 7, 8, and 9, respectively, are here inserted.)

[fol. 151]

(Defendant's Exhibit 4.)

6/9/39 C. P. A.

Order.

In the Probate Court of St. Clair County, Illinois.  
In the Matter of

The Estate of John R. Stewart, Deceased.

And now on this 30th day of November, A. D. 1937, being one of the judicial days of the November Term of this court, comes Mary Stewart, widow of John R. Stewart, deceased, and administratrix of his estate, and files her verified petition praying that she may be authorized as such administratrix to settle all claims and demands that she may have as such administratrix against the Southern Railway Company on account of the fatal injuries received by said deceased on February 12, 1937, in his employment as a switchman for Southern Railway Company, from which injuries said deceased died on the 14th day of February, 1937, and that at the time of said injuries said deceased and said Southern Railway Company were engaged in interstate commerce, and that said Southern Railway Company has offered and agreed, provided a full and complete release can be obtained, to pay to said administratrix the sum of Five Thousand Dollars (\$5,000.00), in full settlement of all claims and demands on account of said fatal injuries to said deceased.

Said petitioner further represents that one Charles P. Noell, whose business address is 1502 Telephone Building, in the city of St. Louis, Missouri, claims to have a lien for attorney fees on the amount which petitioner receives in settlement of said claim, and that any such lien which the said Charles P. Noell may claim is null and void and of no force and effect, and that said Charles P. Noell is not [fol. 152] entitled to any attorney fees or any lien for attorney fees on said settlement, and further prays that an order be entered by the Court herein directing that said Charles P. Noell be notified to appear in this cause by a

short day to be fixed by the Court, to assert and present his claim, if any, for attorney fees or lien for attorney fees against said administratrix arising out of said settlement.

And the Court having examined said petition and having heard evidence in support thereof, and being fully advised in the premises, doth find that the Court has jurisdiction of the subject matter and of the parties to this proceeding; that the payment of the sum of Five Thousand Dollars (\$5,000.00) to said administratrix of said estate in full settlement of all claims and demands, actions and causes of action accrued to her as such administratrix by reason of the fatal injuries to said deceased, John R. Stewart, received at the time and place aforesaid, will be the payment under all circumstances of a reasonable, just and proper amount therefor, and that it is for the best interests of said estate and all persons interested therein that said settlement be made, and upon the payment of the same that a full release be given to the said Southern Railway Company.

It Is, Therefore, Ordered And Adjudged by the Court that said settlement be and the same is hereby approved, and that upon receipt of the sum of Five Thousand Dollars (\$5,000.00) the said administratrix of the estate of said deceased be and she is hereby authorized to settle said claim and to execute and deliver to the said Southern Railway Company a full and complete release settling, satisfying and discharging all claims, demands, actions and [fol. 153] causes of action of every kind, nature and description which she, the said administratrix of said estate, has against said Southern Railway Company on account of said fatal injuries to said deceased as aforesaid.

It Is Further Ordered And Adjudged that the claim of one Charles P. Noell for attorney fees or lien for attorney fees against said administratrix on account of said settlement be and the same is set for hearing at 9:30 A. M. on the 10th day of December, 1937, at which time the said Charles P. Noell shall appear and present his claim for such attorney fees or lien for attorney fees.

It Is Further Ordered And Adjudged that the Clerk of this court shall immediately send to the said Charles P. Noell addressed to him at 1502 Telephone Building, St. Louis, Missouri, a certified copy of this order, by registered United States mail, which shall constitute notice to the said Charles P. Noell of the hearing before this Court of his claim for attorney fees or lien for attorney fees.

It Is Further Ordered And Adjudged that the administratrix make no distribution of said amount so received in settlement from Southern Railway Company until the further order of this court.

PAUL H. REIS,  
Judge.

(Endorsed on Back): 62-531 Estate of John R. Steward, Dec'd. Order of Settlement. Filed Nov. 30, 1937,  
L. O. Reinhardt, Probate Clerk.

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In the Matter of the Estate of

JOHN R. STEWART,

Deceased.

PETITION FOR SETTING ASIDE ORDER AUTHORIZING SETTLEMENT

Petitioner states that she is the duly appointed, justified and acting administratrix of the estate of John R. Stewart, deceased.

That on the 30th day of November, 1937, she filed a petition before your Honor praying for authority to settle her claim in favor of the wrongful death of her husband.

Petitioner states that the order was entered in violation of authority to settle her claim which was a result of fraud and duress on the part of the Southern Railroad Company, and its agents and attorneys.

That since the filing of the Petition in the Honorable Court to settle her claim, she has received back the money paid to her and has now residing in the Federal Court in St. Louis, Missouri, a motion to set aside the aforesaid order of the Court to return the money to its pocket.

HEREFORE, petitioner prays an order of the Court setting aside the aforesaid order for fraud and duress and for the return of the money to her, and wherein petitioner was made administratrix of the estate of her claim against the Southern Railroad Company in the Honorable Court of her husband.

Mary Stewart  
Administratrix

Subscribed and sworn to before me this 1st day of December, 1937.

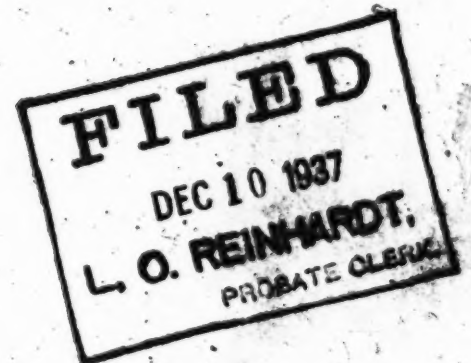
Mary Stewart  
Notary Public

My commission expires January 1, 1938



IN THE PROBATE COURT OF  
ST. CLAIR COUNTY, ILLINOIS.

In the matter of the Estate of  
JOHN R. STEWART,  
Deceased.



*Dec 10, 1937  
Hearing on  
within petition  
set for January 7  
1938. 9 A.M.  
Clerk to send notice  
Paul Steiner  
Judge*

PETITION FOR SETTING ASIDE ORDER  
AUTHORIZING SETTLEMENT.

**DOCKET OF**  
**THE PROBATE COURT**  
**OF ST. CLAIR COUNTY, ILLINOIS**

NoB-768

ATTORNEYS	PARTIES	BOND
Classin.	<p style="text-align: center;"><i>In the Matter of the Estate of</i></p> <p style="text-align: center;">John E. Stewart, deceased</p> <p style="text-align: center;">Mary Stewart, petitioner</p>	
DATE	DOCKET ENTRIES	RECORD PAGE
16	<p style="text-align: center;"><del>APRIL TERM</del> A.D. 1937</p> <p>Proof of death duly made. Petition of Mary Stewart for letter of administration to issue to the petitioner presented.</p> <p>Proof of heirship duly made. Court finds that deceased left surviving him Mary Stewart his widow Clarence Stewart, Minnie Ham. Roland Stewart his children as his sole and only heirs at law.</p> <p>Ordered that letters issue to the petitioner upon filing her oath as administratrix and bond in the sum of \$1000.00.</p> <p>Oath and bond filed. Bond approved and appointment made.</p> <p>Adjustment to the June Term A.D. 1937.</p> <p style="text-align: center;">NOVEMBER TERM A.D. 1937</p> <p>30 Petition of the administratrix for authority to compromise for claim of wrongful death of deceased presented. Ordered that administratrix be authorized to compromise claim as per written order on file.</p> <p style="text-align: center;">DECEMBER TERM A.D. 1937</p> <p>10 Petition of Mary Stewart to set aside order on compromise presented. Hearing on petition set for January 7th 1938 @ A.M. clerk to notify petitioner.</p> <p style="text-align: center;">JANUARY TERM A.D. 1938</p> <p>31 Petition of the Southern R.R.Co., to intervene in the motion heretofore filed in behalf of Mary Stewart administratrix, to set aside settlement for wrongful death of the deceased. Motion granted.</p> <p>Motion of Mary Stewart <del>denied</del> to set aside approval of settlement for fatal injuries to her decedant denied.</p>	<p>62 96</p> <p>62 51</p> <p>62 562</p> <p>63 52</p>



[fol. 158]

(Defendant's Exhibit 7.)

6/9/39 C. P. A.

(Application of Southern Railway Company for leave to intervene at hearing on Motion of Mary Stewart, Administratrix, etc., to set aside Order of Settlement.)

In the Probate Court of the County of St. Clair,  
State of Illinois.

In the Matter of

The Estate of John R. Stewart, Deceased:

And now comes the Southern Railway Company, a corporation, by Phillip G. Listeman, its attorney, and respectfully moves the Court that it may be permitted to intervene and become a party to the hearing on the motion by Mary Stewart, Administratrix of said estate, to set aside order of this Court entered on November 30, 1937, approving settlement of her suit against the Southern Railway Company, and authorizing the dismissal of the same in the District Court of the United States for the Eastern District of Missouri, and in support of this motion Southern Railway Company says:

That said motion involves the question of whether or not an order of this Court authorizing and directing said Mary Stewart, as Administratrix as aforesaid, to settle her suit against the Southern Railway Company on account of fatal injuries received by her husband and intestate while employed by the Southern Railway Company, and the dismissal of the suit brought by her as administratrix against the Southern Railway Company, in the District Court of the United States for the Eastern District of Missouri, to recover damages on account of the same, be set aside.

Southern Railway Company avers that it has paid the amount of said settlement and taken a release from the said Mary Stewart, Administratrix as aforesaid, and has, in all respects, complied with the provisions of the order [fol. 159] of this Court on November 30, 1937, aforesaid.

Southern Railway Company further says that the hearing, order and judgment on said motion may affect an interest or title which it has, namely, its interest or title



in the settlement made as aforesaid, the release executed by the said Mary Stewart, as Administratrix<sup>as aforesaid</sup>, in accordance with the said order of this Court, and the payment of the money by the Southern Railway Company to her.

Southern Railway Company, therefore, represents under Section 25 of the Civil Practice Act of the State of Illinois that it has an interest or title, as above set forth, which the judgment and order of this Court on said motion may affect, and it, therefore, asks under said Section 25 of the Civil Practice Act for permission of this Court to intervene upon the hearing of this motion, and to be made a party thereto.

All of which is respectfully submitted.

SOUTHERN RAILWAY COMPANY,  
By Philip G. Listeman.

[fol. 160] State of Illinois,  
County of St. Clair—ss.:

H. B. Haun, being first duly sworn on his oath, deposes and says that he is Claim Agent of the Southern Railway Company, having jurisdiction in the County of St. Clair in the State of Illinois, and other counties in Illinois, Indiana and Missouri; that he has full knowledge of the facts set forth in the foregoing petition and that he is authorized to make this affidavit. That he has read over the above and foregoing petition and is fully acquainted with the facts set forth therein, and that the facts set forth therein are true and correct as therein stated.

H. B. HAUN.

Subscribed and sworn to before me this 31 day of January,  
A. D. 1938.

L. O. REINHARDT,  
Probate Clerk.  
By E. C. Schobert, Dpy.

(Endorsed on Back): Estate of John R. Stewart. Petition of Intervention of Southern Railway Co. Filed Jan. 31, 1938, L. O. Reinhardt, Probate Clerk.



[fol. 162]

(Defendant's Exhibit 8.)

6/9/39 C. P. A.

CHestnut 52838

Charles P. Noell  
 Attorney and Counselor at Law  
 Suite 1502 Telephone Bldg.

St. Louis

December 8, 1937.

Leonard O. Reinhardt,  
 Probate Clerk,  
 Belleville, Illinois.

Dear Sir:

Enclosed please find Petition, which you will kindly file  
 in the matter of the Estate of John R. Stewart.

Please call this to the attention of Judge Reis, and oblige.

Very truly yours,

CHARLES P. NOELL.

CPN:JG

(Endorsed on Back): Filed Dec. 10, 1937, L. O. Rein-  
 hardt.

[fol. 164]

(Defendant's Exhibit 9.)

6/9/39 C. P. A.

In the Probate Court of the County of St. Clair, in the  
 State of Illinois.

In the Matter of

The Estate of John R. Stewart, deceased.

E. C. SCHOBERT, being duly sworn, upon his oath de-  
 poses and says that he is and for more than one year last  
 past has been the duly appointed, acting and qualified  
 Deputy Clerk of the Probate Court of the County of St.  
 Clair in the State of Illinois; that on the 30th day of No-  
 vember, A. D. 1937, as such Deputy Clerk as aforesaid,  
 and acting for and on behalf of the Probate Clerk of said  
 County and as his deputy, as aforesaid, in compliance with  
 the order of this Court on that day entered in the above

entitled cause, he did send by United States mail to Charles P. Noell, at 1502 Telephone Building, St. Louis, Missouri, a certified copy of the order of said Court entered in said cause on the said 30th day of November, A. D. 1937. That said certified copy of said order was placed by this affiant in an envelope, which was duly sealed and then addressed to the said Charles P. Noell at 1502 Telephone Building, St. Louis, Missouri, and sufficient amount of United States postage was placed on the same for the sending of the same through the mail as a registered letter, with a return receipt requested; and the said envelope so addressed and stamped, as aforesaid, containing said certified copy of said order of this Court, as aforesaid, was deposited in the United States mail by this affiant on the said 30th day of November, A. D. 1937.

[fol. 165] Affiant further says that afterwards he received the return receipt for such registered letter, which return receipt so received by him through the United States mail is attached hereto and made a part of this affidavit.

And further this affiant saith not.

E. C. SCHOBERT.

Subscribed and sworn to by the said E. C. Schobert this 10th day of December, A. D. 1937.

L. O. REINHARDT,

(Seal)

Probate Clerk.

(Endorsed on back): Estate of John R. Stewart, dec'd. Affidavit of mailing of Notice to Chas. P. Noell. Filed Dec. 10, 1937, L. O. Reinhardt, Probate Clerk.

[fol. 167] Mr. Davis: I think that is all.

Mr. Hay: That is all. You are still Clerk, are you?

A. Yes, sir.

Mr. Hay: That is all.

Mr. Davis: We rest, may it please the Court, at the [fol. 168] present time.

The Court: You what?

Mr. Davis: In the orderly procedure, we rest.

The Court: You rest now?

Mr. Davis: Yes. Of course, that does not preclude us, as I understand it, from introducing further evidence.

(Here ensued a colloquy between Court and counsel, out of the hearing of the jury.)

Mr. Lucas: It is stipulated by and between counsel for plaintiff and counsel for defendant that the exhibits which were produced in court by the Clerk of the Probate Court of St. Clair County, Illinois, with the exception of Exhibit 1 for which a receipt will be given to him, may be withdrawn and taken by him to the court.

Mr. Hay: That is all right.

Mr. Lucas: That is agreeable to both parties.

It is further stipulated that there is no objection to substituting copies of the originals of these exhibits, defendant's Exhibits.

Mr. Davis: Defendant's Exhibits 1, 4, 5, 6, 7, 8 and 9. They are in here anyway with the exception of one of them.

Mr. Lucas: All exhibits, defendant's exhibits 2 and 3? [fol. 169] Mr. Hay: That is all right.

The Court: Will counsel step up to the bench a minute?

(Here ensued a colloquy between Court and counsel off the record.)

Mr. Sheppard: We promised Your Honor we would show the earnings of the decedent last year.

We will comply with that by putting a man on now who knows. We were about to forget that.

C. O. YOUNG, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, as follows:

#### Direct Examination.

By Mr. Davis:

Q. Will you please state your name?

A. C. O. Young.

Q. Where do you live? A. 2112 Maryland Avenue, Louisville, Kentucky.

Q. And what is your business now?

A. Chief Clerk to the Superintendent of the Southern Railway on the St. Louis and Louisville Division.

Q. What was your business on February 14, 1937?

A. I was timekeeper.

Q. And how long before that had you been timekeeper?  
[fol. 170] A. I had been timekeeper since 1932.

Q. Now, have you any records with respect to John R. Stewart, and the hours he worked and the money he made during that time?

A. I have the record, of the amount that he made in the year 1936.

Q. In the year 1936? A. Yes, sir.

Q. And up to the time that he died? A. Yes, sir.

Q. All right. Now, let us see those records.

(Witness produces certain records.)

Q. Can you look at those records and tell me how many days John R. Stewart worked during the month of January, 1936, and what he made?

A. No, sir. I can tell you what he made, but the payrolls do not show the number of days he worked.

Q. Can you tell what he made during that month?

A. What month was that?

Q. January, 1936.

A. No. I have his earnings for the period of February, 1936, starting the first period of February up to the time of the accident.

Q. Now, take February, how much did he earn in that time?

A. \$77.67, wait a minute, \$77.17.

Q. That was during the whole month of February, 1936?

A. That is right.

Q. Now, how much, \$77.00 what? A. \$77.17.

[fol. 171] Q. Now, how much did he earn during the month of March, 1936?

A. During the first period of March he earned \$76.34, and the second period of March he earned \$87.30.

Q. And what did he earn during April, 1936?

A. April, 1936, for the first period April, 1936 he earned \$72.93, and the second period of April, \$58.25.



Q. How much did he earn during the month of May, 1936?

A. The first period of May he earned \$74.07, the second period of May, \$73.97.

Q. How much did he earn during June, 1936?

A. June, the first period he earned \$80.49, and the second period he earned \$55.98.

Q. And how much did he earn during the month of July?

A. The first period of July he earned \$50.08, and the second period of July he earned \$91.04.

Q. How much did he earn during August?

A. The first period of August he earned \$75.22, and the second period of August he did not work, no earnings.

Q. You have nothing in your records showing why he did not work?

A. No, sir, I do not know why.

Q. How much in September?

A. In the first period, \$33.10, and in the second period, \$60.20.

Q. And how much during October?

A. The first period of October he earned \$67.13; in the [fol. 172] second period of October he earned \$74.27.

Q. And the month of November?

A. In the first period of November, he earned \$55.76, and the second period of November, he earned \$6.62.

Q. \$6.62? A. Yes, sir.

Q. How much did he earn during December?

A. The first period of December he earned \$46.65, and the second period he earned \$79.23.

Q. How much did he earn during the month—was that December?

A. That was December, yes, sir.

Q. And how much during January?

A. During the first period of January, 1937, he earned \$80.09, and the second period of January he earned \$55.87, and \$6.83, that will give you the total of that second period \$62.70.

Q. And why that extra, overtime?

A. Well, no, in the second period of January, 1937, on account of the flood conditions we had down in Louisville, there was a lot of the time [—] did not get in, and we made two sets of payrolls.

Q. That was in Louisville? A. Yes, sir.



Q. Not in East St. Louis? A. No, sir.

Q. How much did he earn in February, 1937?

A. \$24.24.

[fol. 173] Q. And how much did he get a day?

A. An eight-hour day was \$6.62.

Q. \$6.62 a day? A. Yes, sir.

Q. And what was the average during the year before?

A. He averaged—

Q. Before his death? A. \$119.94.

Q. \$119.94? A. Yes, sir.

Q. The year before his death?

A. Yes, sir. That was from February to January, inclusive, 1937.

Mr. Davis: I think that is all.

#### Cross-Examination.

By Mr. Hay:

Q. Do you have the records for the previous year?

A. For 1936?

Q. 1935. A. No, sir, I have not.

Q. You have no record except for the year 1936?

A. That is right.

Q. I see.

The Court: You have those records, haven't you, but you haven't brought them here?

A. That is right.

Q. I note that in each half month for the whole year before his death he worked. If I followed you correctly, he worked in each of the half months and was paid for [fol. 174] each of the half months except for the second half of August.

A. I believe that is the only one that I said he did not work in, but he did not work in the first period of February, 1936.

Q. The first period of February?

A. But he received two checks for the second period of February, 1936.

Q. I see. But all the rest of the time he worked in each of the half months?

A. Yes.

Mr. Hay: That is all.

Mr. Davis: That is all.

Mr. Davis: I think we rest.

Mr. Sheppard: We really rest now, don't we?

Mr. Davis: Yes, except for the doctor.

The Court: You rest now except for the doctor's testimony tomorrow morning, which I will permit you to introduce out of turn.

Mr. Davis: Yes.

### Plaintiff's Case in Rebuttal.

And thereupon the plaintiff, to further sustain the issues in her behalf, offered the following evidence in rebuttal:

[fol. 175] MRS. MARY STEWART, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further on behalf of the plaintiff, in rebuttal, as follows:

### Direct Examination.

By Mr. Hay:

Q. Mrs. Stewart, you have testified heretofore that Mr. Stewart, your husband, died on February 14th?

A. Yes, sir.

Q. 1937? A. Correct.

Q. Following that time you engaged counsel for the purpose of bringing a suit against the company, did you not?

The Court: He means you employed a lawyer, I think.

Q. You employed a lawyer to bring the suit?

A. Before my husband died?

Q. No. I say after your husband's death.

A. Oh, after, yes, sir.

Q. Do you remember when it was that you hired a lawyer?

A. The 16th of April, I think it was.

Q. And whom did you employ? A. Charles P. Noell.

Q. I see. Following your employment of Mr. Noell you were appointed administratrix of the estate as you have testified heretofore, were you not?

A. Yes, sir.

[fol. 176] Q. And the suit was filed here in the City of St. Louis?

A. Yes, sir.

Q. Now, before your employment of any lawyer had any representative of the railroad company come to you to talk a settlement of the case?

A. Well—

Mr. Davis: Your Honor, we object to any such evidence because this is a collateral attack on the judgment or order of the Probate Court of St. Clair County of Illinois; that evidence cannot be introduced relative to fraud or duress until a suit to set aside an orderly judgment of the Probate Court in a direct proceedings has been made.

In this case plaintiff filed such proceeding and it was denied.

We object again on the ground that fraud or duress is limited to the time of the execution of the release and certainly duress is, because time for reflection does not need duress, and certainly anything that happened before—

The Court: Don't argue, but make your objection.

Mr. Davis: I am making it. I do not want to do that.

Then, we object to any testimony on the ground that she ratified the settlement by a petition filed in the Probate [fol. 177] Court after the agreement to the settlement in the office of Kramer, Campbell, Costello & Wiechert, she ratified it afterwards, after she got away from them by accepting and cashing the draft.

We object again because you cannot show fraud or duress in the execution of the release where there is a valid order or judgment of a court, and where the fraud or duress itself does not relate to the time of the execution of the release.

We object on the sixth ground, to the signing of the release after the Probate order, after the Probate Court order, that that was a ratification of it and no fraud or

duress is admissible after the order entered because she herself petitioned the Probate Court to execute the release.

The Court: The objection is overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

The Court: Proceed.

Mr. Hay: Will you read the question, please?

(Question read.)

Mr. Davis: May it please the Court, without repeating them, because we do not want to do that, may the same objections run to all of her testimony?

[fol. 178] The Court: The objection may run to all the testimony upon this point.

Mr. Davis: Yes, sir.

The Court: And of course, the objection will be overruled.

Mr. Davis: Yes, sir.

Q. Now, do you understand the question now, Mrs. Stewart? A. Did any lawyer come to me?

Q. Did anyone representing the Southern Railway Company come to you?

A. Oh, Mr. Felsen came with a Mrs. Pouch. He was taking care of her case.

Q. But this lawyer, he was not representing the Southern Railway Company, was he?

A. Well, no, but he was taking care of her case for her. Her husband had gotten killed.

Q. I am not referring to the visit of some other lawyer.

A. Well, that is the only lawyer that came there.

Q. What I am getting at, did any representative, claim agent or other of the Southern Railway Company come to see you about a settlement? A. Oh, Mr. Haun came.

Q. Is this the gentleman sitting over here?

A. Yes, sir.

[fol. 179] Q. Stand up, will you please, sir?

(Mr. Haun stands up, as requested.)

Q. Is that the man that came to see you?

A. He came once, he said to get acquainted.

Q. Now, when was that?

A. I do not just recall when it was, but it was along early in the spring.

Q. That was before you had employed Mr. Noell?

A. Oh, yes, sir; and then he came again and told me that there would be a man there to tell me that they would offer me a thousand dollars.

Q. I see. Well, did somebody later come?

A. Later on there was a man came and I was not home, and then he called again.

Q. Do you know who that was?

A. His name was Reno, I found out later, but at that time he would not discuss his name. He came about 9:30 or 10:00 o'clock at night, when there was no one there but my daughter and I, and I told him that I did not want to talk to him because he would not tell me, I thought a man that was ashamed of his name—

The Court: Just a minute. I would like to ask a question.

A. I—

The Court: Wait a minute. I want to ask you a question. [fol. 180] What statement did he make to you about his reason for being there?

A. Well, he said he was a friend of my husband, and he would like to come just to see what he could do to help me out in our—

Q. Did he state that he was connected with the Southern Railway?

A. No. He said he was working for a refinancing company, and he could not tell just who he was, or what.

The Court: Oh, yes.

Q. I see. He did not claim to be working for the railroad company?

A. No, he was not supposed to be working.

Q. That is this Mr. Reno? A. Yes.

Mr. Hay: Will you stand up, please, sir (addressing a man in the audience who later was identified as Mr. Reno)?



(A man in the audience addressed as heretofore, stood up as requested.)

Q. Is that the man?

A. He came once before, but he did not want to come in, because he did not want anyone to know who he was.

Q. And he claimed to be a friend of your husband?

A. Yes.

[fol. 181] Q. Now, was this before you had employed Mr. Noell or after? A. Well, he came before.

Q. I see. A. And then he came again after.

Q. Afterwards? A. Yes, sir.

Q. All right. Now, did anybody else come to see you before you had employed Mr. Noell, I mean representing the Southern Railroad Company or claiming to represent them?

A. Well, this Mr. Reno was telling me that a man in Missouri he would like to have me talk to him, a Mr. Stillwell, and he would like for him to take the case.

Q. Did you later find out who Mr. Stillwell was?

A. Well, I later on did, yes.

Q. That is some man up in North Missouri?

A. Some place, Hannibal, I believe.

By The Court:

Q. Do you mean Walter Stillwell, a lawyer at Hannibal, Missouri?

A. Walter Stillwell, yes, sir.

Q. Now, then, what was the next that occurred with respect to any conference about your case? Who came to see you next?

A. I can't just recall who now.

Q. I see. Now, then after Mr. Noell had filed a suit for you, that was in April, was it?

Mr. Noell: Yes.

[fol. 182] Q. In April, 1937? A. Yes, sir.

Q. During that spring did anyone come to see you again after this suit was filed?

A. Mr. Haun came and told me that they would give me two thousand dollars.

Q. And where did he see you then?

A. He was at our place then, at my daughter's place rather. I was staying there.

Q. That was over in East St. Louis?

A. East St. Louis, yes, sir.

Q. I see.

A. I had hardly recovered my nerves from the loss of my husband, and everything, you know, got me all stirred up, and part of the time I was, you know, lying around, not able to do anything.

Q. Now, when was this about?

A. Well, that was in April.

Q. In April?

Mr. Davis: 1937.

Q. 1937?

A. In 1937; and then I went to Coulterville, to my nieces.

Q. You went to Coulterville?

A. I went to Coulterville.

Q. Is that in Illinois?

A. That is in Illinois, about fifty miles, I guess, south.

[fol. 183] Q. Now, did Mr. Haun come, or anyone else come to see you down there?

A. Mr. Haun came down.

Q. Just tell what occurred when he came at that time.

A. Well, the day that I was starting down there my niece came after me, and while I was getting ready, why Mr. Haun came and he sat there awhile, and we got ready to go, we excused ourselves.

The Court: This was where?

A. That was at my daughter's, Mrs. Hamm's.

The Court: In East St. Louis or in St. Louis?

A. East St. Louis, yes.

The Court: East St. Louis.

Q. All right.

A. And he said he seen I was getting ready to go some place, and he excused himself and left, and we went down to Coulterville, and when we got down there there was a message already came, sent there, that they would like to have me appoint Mr. Felsen to take the case.

Mr. Davis: Wait a second. We object to that unless it is shown that it is the act of somebody connected with the Southern Railway.

The Court: Yes.

Mr. Hay: Yes.

[fol. 184] The Court: You may have an opportunity to show it.

Q. From whom did you get that message?

A. That message came from—

The Court: Who delivered it to you? That is what you want.

Mr. Hay: Yes.

A. Let's see, what was the name of the man?

The Court: Was it a written message?

A. It was a written message.

Q. Well, do you have that?

Mr. Davis: Then we object to it, unless—

Q. Well, do you know, do you have that message?

A. No, I do not have it. I did have it for a while, and then I thought maybe it would not amount to anything, and I just laid it aside.

Q. Now, that had reference to Mr. Felsen's handling of the case? A. Yes.

Mr. Davis: Now, we object to that.

The Court: Sustained.

Mr. Davis: We object.

The Court: Don't tell anything more about that message, because I have ruled that out. You can't testify about that.

[fol. 185] The Witness: Yes. And then in a day or so Mr. Haun came down, that was the 20th, I believe, he came down to talk to me, and it was a dreary rainy day, and he would not talk to me in the house.

Q. That was down at Coulterville?

A. At Coulterville.

Q. At your niece's? A. At my niece's, Mrs. —

Q. Mrs. McKelvey?

A. McKelvey, the lady who sits over here.

Q. The lady who sits over here? A. Yes.

Q. All right.

A. He did not want to talk to me in the house, so he wanted me to go out to his car. So I went out to the car. I thought he had something to tell me from Mr. Noell, maybe Mr. Noell had said, so I went out to the car, and he tried to persuade me to take this five thousand dollars.

Q. Five thousand? A. Five thousand dollars.

Mr. Davis: We object to what he persuaded her. Let her tell what she said, and what he said.

The Court: Sustained.

The Witness: Four thousand. I will take that back, four thousand.

The Court: Just tell what he said. Don't say "persuaded".

[fol. 186] Q. Just go on and give as much of the conversation as you can recall.

A. And he told me that was a good sum, and he thought I should take it.

The Court: What was a good sum?

A. Four thousand dollars, and that he thought I should take it now, or I would never take it because if I did not take the offer while he had it ready, I would not get anything. I said I had a lawyer to take my case, and I had nothing to do with it, and he said he had nothing to do with the lawyer, and he would not negotiate with him now or no time, that I either take the four thousand or nothing. So I did not take it. He said "I would like you to be satisfied." I said, no, I was not satisfied.

Q. How long did he stay there?

A. Well, it appeared to me it was several hours.

Q. And all of that time you were sitting in this car?

A. Yes, sir.

Q. Did he talk to you at any time in the presence of Mrs. McKelvey, your niece? A. No, sir.

Q. And the result was that he offered you, as you have stated, the four thousand dollars?

A. Four thousand dollars. He said it was all ready, that all I should do would be to take it.

[fol. 187] Q. Now, that was in what month of 19—

A. That was the 20th of April.

Q. About the 20th of April, 1937?

A. Yes, about the 20th.

Q. All right. Now, when did you next see anyone in connection with any effort on the part of this company to settle the case?

A. Well, the more I thought about it, you know, and him, and the way I felt, and the condition, and all.

Mr. Sheppard: We move to strike that out, Your Honor, as not responsive to the question.

The Court: Sustained.

Q. When did you next see Mr. Haun?

A. One of my other nieces took me over to her place that night, and I stayed with her.

The Court: Is that in Coulterville?

A. At Coulterville, just a few blocks, and I was in a very nervous state, stayed all night, and the next morning—

Mr. Davis: We move to strike that out, Your Honor, as still not responsive.

The Court: Sustained.

The Witness: And Mr. Haun came back to see me again.

Q. When was that, the next morning?

A. The next morning, he came back and I was not there, so he came over to my other niece's, Mrs. McMen-[fol. 188]. amy, and she told him that I was sick, and he wanted to see me, so she told him no, she did not want me to be disturbed, that I was crying, and she did not want me to be worried, so he came in and spoke, he said, "Mrs. Stewart, since you are feeling so bad I will not detain you. I will be going.", and my niece said, "Well, I wish you would because I do not want you to talk to her" and he left, and I never saw him any more then, I think that is the last time I seen him. Then we went to Salem to see my brother-in-law, Mr. Stewart.



Mr. Davis: Now, wait a second. Were you there?

A. Were I where?

Mr. Davis: At Salem.

A. We went to Salem.

The Court: She said she went to Salem to see her brother-in-law.

Mr. Davis: Oh.

The Witness: We went to Salem to talk to my brother-in-law.

The Court: Salem, Illinois?

A. Salem, Illinois; and then he was telling me about Mr. Reno talking to him.

Mr. Davis: That is hearsay, Your Honor.

The Court: Certainly. Your objection is sustained.

[fol. 189] The Witness: He was talking to him.

The Court: You must not—

Mr. Hay: We will cover that.

The Witness: Excuse me.

The Court: You can't tell what people told you.

The Witness: Oh, yes.

Q. At any rate, you talked the matter over with Mr. Stewart? A. Yes, sir.

Q. I see. Now, did you see Mr. Reno again, or did he come to see you again after that?

A. No, he never came to see me any more. I went down to Kentucky, to Hodgenville, Kentucky.

Q. Now, when you got down to Hodgenville, Kentucky, did they send anybody to see you down there?

Mr. Davis: We object to that unless she knows.

The Court: Sustained.

Mr. Hay: We will strike that out.

Q. Did anybody come to see you down there, talk to you about settling the case?

Mr. Davis: We object to it, unless it is connected in any way.

The Court: I do not know whether anybody came yet. I do not know how he can connect it up before he knows something about it. She may answer.

[fol. 190] Q. Did someone come to see you down there?

A. Yes, sir.

Q. Who was it?

A. Well, a time or two when I would be passing along I would see someone peeking around a curtain at a hotel, and then in a few days Mr. Hanley, known as Blond Hanley, came over to my nephew's, Mr. Leahy's, and he told him—

Mr. Davis: Wait a second. We object to what he told him.

The Court: Unless she heard it.

Mr. Sheppard: Unless it is connected up with this defendant, Your Honor.

The Court: Yes. Sustained.

Q. Just a moment. Had you sent for him, Mr. Hanley?

A. No, sir.

Q. Had you communicated with anybody down there about your case?

A. No one, only my nephew. We talked the matter over.

Q. You talked about it. But I mean, you did not ask anybody, Mr. Hanley or anybody else, to come and talk to you about the case? A. No, sir. I did not.

Q. All right. Then how long did you stay down in Kentucky?

A. Well, I was going to tell you, that they asked me, [fol. 191] they wanted me to come over to the office.

Mr. Sheppard: Just a minute. I thought all that had been stricken out.

Mr. Hay: I think this perhaps is inadmissible. She can't testify that they sent this man to her so we will omit that for the moment.

Q. Now, Mrs. Stewart, how long did you stay in Kentucky?

A. Well, in July, my daughter wrote me that there was a man came there representing an insurance company—

Mr. Sheppard: Well, we will move to strike that out, Your Honor, for two reasons, first it is not responsive to the question, and second, because it is hearsay.

The Court: Sustained.

Mr. Hay: Just a moment.

Q. Just answer this question first, Mrs. Stewart, as to how long you stayed down in Kentucky. You say you went down to Kentucky? A. Yes, sir.

Q. How long did you stay there?

A. Well, I was there most of the summer. I just don't remember just what date it was now I did come back.

Q. Now, while you were down there after this, that you started to mention a moment ago, did anyone else come to see you to talk settlement of the case with you?

A. No, sir.

[fol. 192] Q. I see. Now, when did you next have a discussion with anyone about a settlement of the case?

A. Well, I had never met anyone after that to talk about the case, not until—until this come up in November.

Q. And that was the time just before the settlement was finally arranged? A. Yes, sir.

Q. Now, from whom did you get a message, or did you get a message to come to see anybody?

A. Mr. Haun sent a message to my son-in-law.

Mr. Davis: Well, we object to that unless she knows herself.

The Court: Sustained.

Q. Who is your son-in-law?

A. Henry Hamm, and the message was sent to me and I have the message.

Q. Have you that with you; do you have that message here? A. I think Mr. Noell has the message.

Mr. Davis: That is all right.

Mr. Hay: Mark this Plaintiff's Exhibit "D".

(A telegram was marked by the reporter as Plaintiff's Exhibit "D".)

Q. I show you what has been marked Plaintiff's Exhibit "D" and ask you if that is the telegram to which you refer?

A. Yes, sir. I had gone to Coulterville or to Castleton, Illinois, at the time, but she sent it to me up there.

[fol. 193] Mr. Hay: We offer in evidence this telegram, Plaintiff's Exhibit "D", in connection with the testimony of this witness.

Mr. Davis: No objection.

(Thereupon Mr. Hay read to the Court and the jury the document identified as Plaintiff's Exhibit "D", which is, in words and figures, as follows, to-wit:)

(Plaintiff's Exhibit D.)

"Oakland City, Indiana. Henry Hamm. 1521 Gaty Avenue

Mr. Campbell suggests you and Mrs. Stewart be at my office 3:30 to 4:00 P. M. Thursday. Important.

H. B. HAUN."

[fol. 194] Q. Now, after you got this telegram, I mean you got word that Mr. Hamm had received this telegram, what did you do? A. I came back.

Q. And where did you come to?

A. I come to my daughter's, Mrs. Hamm, in East St. Louis.

Q. Over in East St. Louis? A. Yes, sir.

Q. Now, when you got there tell the jury whether or not you learned that this Mr. Hamm had a message for you from someone connected with the Southern Railway Company.

A. He had been called to the office several times.

Q. Well did—

Mr. Sheppard: We move to strike that out, Your Honor. That is hearsay, of course.

The Court: Sustained.

Q. Well, did he have or state to you that he had a message from Mr. Campbell or Mr. Howell, or Mr. Campbell connected with the Southern Railway, with respect to the settlement of your case?

Mr. Sheppard: We certainly object to that, it is hearsay of the rankest type.

The Court: Sustained.

Mr. Hay: I think we can follow that up.

The Court: A statement from whom, Mr. Hay?

Mr. Hay: From Mr. Campbell, attorney for the South-  
[fol. 195] ern Railway.

The Court: He told her, according to your question.

Mr. Hay: Mr. Hamm, it has been stated here by a witness already on the stand, Mr. Wiechert, that Mr. Hamm brought Mrs. Stewart into the office and we propose to show that Mr. Hamm was called in at the instance—

Mr. Sheppard: We object to this statement, Your Honor.

The Court: Sustained. It is purely inadmissible.

Mr. Hay: All right.

Q. Now, when you came back, and following this telegram, tell the jury whether or not you learned that Mr. Hamm had been called to the office of the Terminal Railroad Company in connection with this case.

Mr. Sheppard: Now, Your Honor, that is an indirect way of avoiding the rule of Your Honor.

The Court: Objection sustained.

Mr. Sheppard: I think counsel should be instructed not to ask prejudicial questions of that kind.

Mr. Hay: Now, just a moment. I wish to show by this witness the communication that came to her as bearing upon her attitude toward a settlement of this case.

We propose to show, as I started to state a moment ago  
[fol. 196] and the gentleman objected to my—



Mr. Sheppard: I again object to what counsel's purpose is to show.

Mr. Hay: I want to make my position clear to the Court.

Mr. Sheppard: This may be a prejudicial statement.

The Court: I don't know what it is you are trying to show now, Mr. Hay.

Mr. Hay: I am trying to show pursuant to this telegram she was called in and learned from Mr. Hamm—

The Court: I mean, whose statement is it that you are trying to show by her, a statement to her by somebody else?

Mr. Hay: No, sir. I am trying to show what she learned with respect to the proposal to settle her case, which was followed up by her going to the offices as has already been testified to here by Mr. Wiechert, and what induced her to go to that office.

The Court: How did she learn what you are trying to find out?

Mr. Hay: That is what I am doing, that is what I am seeking to show by her, that she learned from Mr. Hamm that a proposal had been made to him.

Mr. Sheppard: Now, we object to the statement, what [fol. 197] she learned.

The Court: Sustained.

Mr. Sheppard: Counsel knows better than that.

The Court: The objection is sustained.

Mr. Hay: I object to these constant indicatings on the part of this gentleman to tell me what I know I do not know about matters. I am seeking in good faith to try to present this matter.

If the gentleman objects to any statement before the jury, I have no objection to the jury being withdrawn, but I am trying to show here—I will come up here and state it to you gentlemen.

The Court: I think I understand what you have in mind, but I think it is objectionable.

Mr. Hay: Very well.

Q. Now, let me ask you, when was this that you talked to Mr. Hamm about a settlement of this case?

A. I wanted to know why he asked me to come back.

Mr. Davis: No, no, no.

Q. Just answer the question, when was it you talked to him about it, Mrs. Stewart?

A. When I came back.

The Court: Came back from where?

A. From Castleton, Illinois.

By The Court:

[fol. 198] Q. From where?

A. From Castleton, Illinois.

Q. And when was that with relation to the time you went to the office of Campbell and Wiechert, as has been testified to here in connection with the settlement of the case? A. Repeat that question, please.

Q. I say, when did you have your talk with Mr. Hamm with respect to the time—strike that out.

How long before you went to the offices of Mr. Wiechert and Mr. Campbell was it that you talked to Mr. Hamm?

A. Well, just a few days.

Q. Just a few days before? A. Yes, sir.

Q. And pursuant to what Mr. Hamm said to you you went to the office of Campbell and Wiechert in East St. Louis, is that right? A. Yes, sir.

Q. Now, up to that time had there been any other proposition made to you personally, except the four thousand dollar proposition that Mr. Haun made to you down in Coulterville, Illinois?

A. No, sir.

Q. Now, it appears that in the office of Mr. Wiechert [fol. 199] there was an understanding that the case should be settled for five thousand dollars. When did you first learn that any offer of five thousand dollars was made?

A. Mr. Hamm told me.

Mr. Sheppard: Now, Your Honor, we will have to object to that because that is hearsay, of course.

The Court: You must not tell, Mrs. Stewart, what Mr. Hamm told you. I sustain the objection to that.

Mr. Hay: Well, Your Honor, I can't show—

The Court: Not from Mr. Hamm.

Mr. Hay: That the proposal, the proposition is from some source, this good lady learned that they were offering five thousand dollars.

The Court: I cannot permit her to testify to what Mr. Hamm told her, I do not think.

Mr. Hay: Well, Mr. Hamm was the gentleman delegated to take the message to her, and we will show that.

Mr. Sheppard: Well, Your Honor, I suggest that be shown first. That is orderly procedure.

Mr. Hay: I do not know that it is necessary in the order of the proof that we show that first.

The Court: Yes. With that sort of testimony I think it is better to make your showing first, and then avoid the possibility of having it stricken out.

[fol. 200] Q. Now, Mrs. Stewart, when was it that you first learned that an offer of five thousand dollars was being made to you?

A. Well, they won't let me tell.

Mr. Hay: I think that is a good answer. Just a moment.

(At this point there was a discussion at the sidebar between counsel and the Court, off the record.)

The Court: Announce an adjournment until tomorrow morning at 10:00 o'clock.

At this point, 5:00 P. M., Friday, June 9, 1939, an adjournment was had until 10:00 o'clock, Saturday, June 10, 1939.

Pursuant to the said adjournment, the Court convened at 10:00 o'clock, A. M., Saturday, June 10, 1939, and the following proceedings were had:

The Court: You may proceed in this case.

Mr. Davis: Your Honor said we might put the doctor on the stand the first thing this morning.

The Court: Yes.

Mr. Davis: We have him here.

And thereupon the defendant, to sustain further the issues in its behalf, offered out of turn, by permission of the Court, as a part of its case in chief, the following evidence:

[fol. 201] DR. A. B. McQUILLAN, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, as follows:

Direct Examination.

By Mr. Davis:

Q. Doctor McQuillan, will you please state your name?

A. A. B. McQuillan.

Q. Are you a practicing physician?

A. Yes, sir.

Q. Where?

A. I live in Illinois, licensed to practice medicine in Illinois.

Q. And where do you—what is your address in Illinois?

A. My office address is 410 First National Bank Building, East St. Louis, and I live at 19 Country Club Drive, Belleville, Illinois.

Q. Are you associated with any hospitals, doctor?

A. Yes, sir. I am on the staff of St. Mary's Hospital and the Christian Welfare Hospital in East St. Louis.

Q. And of course you are a graduate of a medical school? A. Washington University.

Q. Now, did you know John R. Stewart?

A. No, sir, not prior to his injury.

Q. Well, at the time of his injury you knew him, did you? A. I knew him, yes, sir.

Q. Did you operate on him?

[fol. 202] A. Mr. Stewart was injured on the 12th day of February, 1937 by a crushing injury of his forearm, right hand.

Q. Now, where was that forearm crushed, Doctor?

A. It was crushed from the elbow down to the wrist.

Q. From the elbow to the wrist?

A. Yes, sir; and he was brought into St. Mary's Hospital with very little shock, but we gave him shock treatment, gave him glucose intravenously, normal solution; and a blood count made which showed he had 4,800,000 white blood cells, that he had not lost very much blood. We gave him tetanus and gas bacillus antitoxin. He was put to bed with the foot of the bed elevated, and of course his arm was dressed. There was nothing done to his arm except to dress it and place a tourniquet around his arm, which remained there untied, so that if he started bleeding they could quickly stop the bleeding, and he was put to bed.

On the following day his condition was as well as could possibly be expected, and at 3:00 o'clock or 3:30 in the afternoon this traumatic amputated arm was removed. Well, at the time when he came in his arm was so badly severed that there only two tendons holding it to the crushed bone of the elbow, and these were cut with a scissors and the arm removed.

The next day, the, oh, three or four inches of the bone of the forearm, and the bone of the elbow joint were shown [fol. 203] ing, had no flesh around them, and at that time the destroyed fragments of the tissue remaining was cleared up, that is, by cutting it off, and he was put to bed.

Q. Well, now, was his arm amputated above the elbow?

A. At the elbow.

Q. At the elbow?

A. It was simply, the arm was traumatically amputated at the elbow, but a few of the bones in the elbow and the arm remained without any tissue and the operation was simply removing those exposed bones.

Q. You mean by that, that when you cut it off that left some bones extending from the elbow?

A. It was cut off already, except the arm was only hanging by two small tendons.



Q. I say, when you cut those tendons. A. Yes.

Q. Then it left those bones exposed? A. Yes.

Q. And you merely cut off the bone at the elbow?

A. Yes.

Q. Now, what happened after that, Doctor?

A. Well, he was removed to his room in very good shape. His condition was very good. And he came out from under the anesthetic without any difficulty.

The next morning he began to, or even that night, later on, became somewhat delirious and restless, and he de-[fol. 204] veloped delirium tremens, and we had to put him in restraint.

Q. Now, what is delirium tremens caused from, Doctor?

A. From alcoholism; and we continued to give him—of course, he was given whiskey immediately after his entrance into the hospital, and he was given whiskey right along, he was given two teaspoons full or two tablespoons full three times a day until he developed his delirium tremens, and then he was given various sedatives that we employed at that time, paraldehyd, and affairs of that kind. He always had to have morphine for his pain.

His condition was fairly good all the time until the day of his death, and that evening after 6:00 o'clock, his nurse—

Q. What evening was that, Doctor?

A. That was on the 14th, he died on the 14th after 6:00 o'clock.

The Court: What day was he injured on?

Mr. Davis: The 12th.

The Witness: He was injured on the 12th.

Q. Now, at 6:00 or 6:30, did you say on the evening of February 14th?

A. Yes, about 6:00 o'clock, and his nurse called me, told me he had suddenly gone bad as she expressed it, and I immediately went to the hospital. When I arrived there [fol. 205] he was in a state of collapse. He was cold, pulseless, and his chest was full of moist rales, and in fact, he was dying by the time I got there.

Q. And what time did he die, Doctor?

A. 8:20, I think 8:20.

Q. Now, what would you say was the cause of his death?

A. Well, the direct cause of his death was the delirium tremens, with a cardiac dilatation. He developed a cardiac dilatation according to the history, and of course, he had a certain amount of shock, but his principal cause of death was delirium tremens.

Q. Now, Doctor, did you have a conversation with Mrs. Stewart with respect to whether or not he—

A. Yes, sir.

Q. (Continuing)—used intoxicants?

A. And with the family, and I have a letter here, if I can introduce that, that I wrote to Doctor Chartle, the chief surgeon, relative to this man's condition following his death, I notified Doctor Chartle, who is the chief surgeon.

Q. Of what?

A. Of the Southern Railroad, that John Stewart, switchman, 1521 Gaty Avenue, East St. Louis—

Mr. Hay: We object to that.

The Court: Sustained.

Mr. Davis: That is all right, if they object to it. They [fol. 206] object to it.

The Witness: All right.

Q. Why did you give him the whiskey, Doctor, those two tablespoons full at a time?

A. Well, I was told by his family, by his wife, that he was subject to drinking, that he drank at intervals, had intervals of drinking, that he never drank while he was on duty, but at times he would lay off, and then he would drink, that when he got through with his spell he would go back to work; and also that he had only been to work I think one day, I think that was the same morning, and that previous to that he had been on a drunk.

Q. Was the giving of this whiskey necessary, Doctor?

A. Oh, yes. All these cases in which men are alcoholic, or in which they take alcohol, or in which they have had alcohol, or I mean been an alcoholic for years past, twenty or thirty years, why we make it an invariable practice to give them whiskey.

The Court: You say that if he used alcohol twenty or thirty years before?

A. Yes, sir. If they were habitual users of alcohol they can develop a delirium tremens.

The Court: After twenty-five or thirty years?

A. Yes, sir, without ever having touched a drop in the [fol. 207] meantime.

Q. Now, Doctor, did this whiskey that you gave him, these two tablespoons full three times a day, did that cause delirium tremens? A. No, sir.

Mr. Davis: That is all.

#### Cross-Examination.

By Mr. Hay:

Q. Did I understand you to say, you started to say that you wrote something to the Southern Railroad about this; whom were you representing in treating this man?

A. I was representing the Southern Railroad.

Q. Oh. Let me see that report, will you (addressing the witness)? How long have you been representing the Southern Railroad?

A. I don't know, quit a few years.

Q. And all that you did there in making reports, everything else you did you were representing the Southern Railroad, is that right? A. Yes, sir.

Mr. Hay: That is all.

Mr. Davis: That is all, Doctor. Thank you.

The Court: We will announce a three-minute recess.

[fol. 208] (Recess, three minutes.)

The Court: Proceed, Gentlemen.

#### Cross-Examination, Resumed.

By Mr. Hay:

Q. Doctor, this report that you—that I had in my hand and which you brought over is the hospital report in this case, is it?

A. No. That, from there on is, this other is my own private, duplicates of my report to the company, and letter to the chief surgeon.

Q. But the part which I now hold in my hand here?

A. Yes, sir, that part.

Q. Is the hospital record that was made at the time?

A. Yes, sir.

Q. Now, these entries that are made on this record, Doctor, from page to page, are made by whom?

A. Well, this—that one (indicating) was made by the interne in the emergency room, see, at the time that I was there. That is the emergency room record.

Mr. Sheppard: Which one is that?

Mr. Hay: Now, let's take it up.

Q. The first page was made by you, was it?

A. Yes, sir.

Q. The first page marked—

A. That is the diagnosis, complete diagnosis.

[fol. 209] Q. Diagnosis. Now, the second page, which is the first pink sheet, that was made by the interne?

A. And signed by me, in my presence in the hospital, yes, sir.

Q. Signed by you in the emergency room. Now, the next page is the third page, and that was made by whom?

A. That is the history taken by the interne.

Q. That is by the interne. Now, the entries made on the next page, and I note that the pages which I have just referred to are all under the date of February 12th, I think, Doctor.

A. No. Which ones now?

Q. That (indicating).

A. No, this is date of admission.

Q. That is the date of admission?

A. Yes. This is the date of discharge.

Q. On the 14th? A. Yes.

Q. The dates are shown here, next to the pink sheet February 12th. A. Yes, date of admission.

Q. And the next page is February 12th. Now, we come to a date February—

By Mr. Sheppard:

Q. What is this here?

A. That is the laboratory report.

Q. Laboratory report, that is under date of—

A. It should be the 12th, the day he came in.

Q. The 12th. All right, now the next page.

[fol. 210] A. The next page is the operating room report.

Q. The operating room report?

A. That would be the 13th.

Q. On the 13th, yes. Now, the next page.

A. The page—

Q. Beginning with the next page.

A. It should be from this side on, the date the 12th, those are my orders to the nurses.

Q. And whose handwriting are these?

A. Well, the first, confidential, in the handwriting of Doctor John Brennan. I dictated them, and the next is in my handwriting, and the next is by Doctor Crotty, the man who gave the anesthetic the following day, and most of the rest is in my handwriting.

Q. Yes. Now, beginning here with what appears to be a detailed record of the case, is that right?

A. No. Yes. No, this is the detailed record of his medication.

Q. Yes. All right.

A. And this is the detailed record of the nurses, the nurses' report.

Q. Now, the nurses' report are on the last two pages here? A. Yes, sir.

Q. And that report covers the time from his entry?

A. Until his death.

[fol. 211] Q. At 6:45?

A. No. As soon as we could get a nurse, 8:00 o'clock, she came on duty at 8:00 o'clock.

Q. All right. Now, at what time did you first see the patient?

A. Well, I probably saw him, I think, I don't know, it may be down there in that sheet. I saw him immediately after his accident, as soon as I could get down there.

Q. At that time his arm, as you say, was traumatically amputated, you mean by that in laymen's language it was mashed off.

A. It was completely mashed off with the exception of hanging on two tendons.

Q. His bones crushed?

A. Crushed off until about the, approximately third of the forearm and elbow.



Q. At what hour was the final separation made, the cutting off, or cutting of the two tendons so as to take that off entirely?

A. Immediately after I got down there to the hospital.

Q. And then when did you next see the patient?

A. I suppose I saw him the next morning, I don't remember it. It would be on the chart there.

Q. And would you be able to say from this?

A. I stayed down there, and we gave him all the treatment for shock, probably spent an hour or two with him [fol. 212] there, and I probably did not see him again until the next morning. I saw him the next morning.

Q. What time? A. 9:00 o'clock.

Q. And when did you next see him?

A. That afternoon when I amputated his arm.

Q. What time? A. 3:00 o'clock.

Q. Then when did you next see him?

A. I next saw him the next morning, between 6:00 and 7:00 o'clock.

Q. And when next?

A. I next saw him that evening at 8:00 o'clock and he expired at 9:20.

Q. You referred to a statement that you made to Mrs. Stewart. I will ask you whether or not you did not state to Mrs. Stewart, after you had looked him over, given him the first treatment, that you thought he was in very good condition and would likely pull through?

A. Probably did. His condition was very good. I got it noted on that chart.

Q. And you entered here, I believe, that he died of delirium tremens? A. Yes, sir.

Q. You have entered that as the primary cause?

A. Yes, sir.

Q. Of this man's death? A. Yes, sir.

Q. Did I understand you to say to Judge Moore that if [fol. 213] a man had drunk liquor, and has gone for twenty-five years without drinking a drop, that if he had an injury like this, he might develop delirium tremens?

A. Yes, sir.

Q. And you would say that he died of delirium tremens?

A. Who?

Q. The fellow who had not touched a drop?

A. It would all depend what he did die of, how he died.

Q. Well, let's assume that a man who had his arm mashed off, had not touched a drop for twenty-five years, that he following that experience could die of delirium tremens? A. Yes, sir.

Q. I see. In other words, if a man never touched a drop of liquor in his life, and gets his arm mashed off, he is in danger of dying of delirium tremens?

A. I never said a drop. I said an alcoholic.

Q. Oh, an alcoholic. A. That is different.

Q. A man gets drunk away back twenty-five years before he gets his arm mashed off, he may die of delirium tremens? A. No, I would say not.

Q. You would say not. But you still—well, that is comforting to me, Doctor, your theory. I want to make a confession here. When I was a child from six years old—

Mr Sheppard: Your Honor, we object to counsel laying [fol. 214] bare his life—

The Court: Sustained.

Mr. Hay: I just wanted to express my gratification of the fact that I did not get drunk at that time, but only sipped liquor, that I am not likely to die of delirium tremens, even if I get my arm mashed off.

Mr. Sheppard: Now, Your Honor, over our objection and in spite of Your Honor's ruling, counsel has insisted on making a speech to the jury, and I ask that Your Honor rebuke counsel for this horse play in the trial of a case.

The Court: Yes. I think counsel made that statement in face of the Court's ruling.

The Court will reprimand counsel for the statement made in the face of the Court's ruling.

Mr. Hay: I beg Your Honor's pardon. I just could not help it.

Q. And you still say this man died of delirium tremens?

A. Yes, sir.

Mr. Hay: That is all.

#### Redirect Examination.

By Mr. Davis:

Q. Doctor, just explain how that may be done?

A. Well, this is not the theory, as Mr. Hay said it was.

It is an actual fact, and any doctor, anybody doing much [fol. 215] traumatic surgery, industrial surgery, or a good deal of surgery, they know that these patients are liable, where they have an accident, an irritation of some kind, something to precipitate it, can develop delirium tremens. I do not say they always do, but it is so well known that we put them ordinarily on a—we get a history of alcoholism years back, still as a safety first measure we always put them on whiskey. Now, every once in awhile you see some of these people who are reformed, and have been in the church, go into delirium tremens, where they are not put on whiskey, where they have been alcoholic far back. This is not theory. It is an actual fact, medical fact that has been treated, and the doctors do that right along. That is all I can say. It needs a precipitating factor.

Mr. Hay: How is that?

A: I say it needs a precipitating factor.

Mr. Hay: Yes.

A. It can be a trauma. However, occasionally sickness will precipitate delirium tremens. Trauma more generally, and it is expected among those familiar with traumatic work and do a lot of traumatic work, that is more or less expected.

Q. Now, Doctor, you said that you graduated from Washington University, when?

A. I graduated in 1903.

[fol. 216] Q. And have you been practicing continuously since that time?

A. With the exception of the time I was in the Army.

Q. And how long were you in the Army?

A. Two years, approximately two years.

Q. Were you there as a surgeon?

A. I was there as a surgeon, yes, sir.

Q. And you had a good deal of practice at that time, did you not, Doctor? A. Yes, sir.

Q. Were you across the waters? A. Yes, sir.

Q. Doctor, have you ever taught medicine or surgery?

A. Yes, sir.

Q. Where?

A. I was instructor in anatomy at St. Louis University from 1911 to 1917, and from 1917 to 1935 I was in the Sur-

gical Department; the last three or four years I was quiz master for the seniors in surgery.

Q. That was at St. Louis University?

A. That was at St. Louis University Medical School.

Q. Are you a member of any medical societies?

A. Yes, sir.

Q. Which ones?

A. I am a member of the American Medical Association. I am fellow of the American College of Surgeons, and the Illinois Medical School, and St. Clair—oh, quite a few others.

Q. And you are a member of these two staffs of the [fol. 217] hospital? A. Yes, sir.

Q. And these records to which Mr. Hay referred are the records of the St. Mary's Hospital at East St. Louis?

A. Yes, sir.

Q. They are not your records? A. No, sir.

Q. Now, these other papers here are your private records?

A. This is a duplicate of the initial report I sent to the Southern Railway. This is a duplicate of the letter I wrote to Doctor Chartle, the chief surgeon at that time, and this is the final report I sent to the Southern Railroad.

Q. That is, these are copies of that?

A. Copies, yes, duplicates.

Q. How much experience have you had in traumatic surgery, Doctor?

A. Well, I have been specializing in surgery since 1915. I do quite a lot of traumatic surgery along with my private work. I do private work also.

Q. Is your chief business that of a physician or surgeon for the Southern Railway Company?

A. Oh, no. The Southern Railroad is the smallest part of my work.

Q. And how are you designated as a surgeon by the Southern Railway?

A. I am the local surgeon for the Southern Railway.

[fol. 218] Q. In order that if anybody is injured, you go on and may attend to them?

A. Yes, yes, so that railroad men who are injured get attention immediately, designated attention.

Q. Have you a system in effect at the Southern Railway that the men pay so much a month for medical attention? A. No, no. I am on a fee basis.

Q. On a fee basis? A. Yes, sir.

Q. Are you a member of any other hospital staffs than those you mentioned? A. No.

Mr. Davis: That is all.

### Recross Examination.

By Mr. Hay:

Q. Now, Doctor, it is possible for one to be delirious without having delirium tremens? A. Yes, sir.

Q. One may become delirious from pain, may one not?

A. Well, I do not think so. I do not think so.

Q. One may become delirious from loss of blood?

A. No. Well, oh possibly yes, they become delirious, I think what you are trying to get at, if a man had a trauma and his arm knocked off, and is delirious, if he gets delirium from that, that would be delirium from absorption.

[fol. 219] Q. Absorption from what?

A. Well, when you open a wound you sacrifice a tissue and you mash the tissue you have your fluids there, which are changed, changed chemically, most of them are changed chemically and you have some absorption.

Q. Isn't it true that patients over and over again, almost without exception, at some stage of a severe illness become delirious?

A. Oh, no, no, no, I should say not.

Q. But it is a frequent occurrence?

A. It is an occasion, yes, it is a frequent occasion, sure.

Q. And you are clear on the proposition that one may be delirious without having delirium tremens?

A. Oh, yes, sure. Sure.

Q. And this record here made by the nurses, from hour to hour and from day to day gives the complete history of what he did?

A. From the nurses' standpoint.

Q. From the nurses' standpoint? A. Yes.

Q. They saw him more than you did, didn't they?

A. Yes.

Q. They were there constantly? A. Yes.

Q. And what he did, and what utterances he made, we would expect to find down here?

[fol. 220] A. The majority of them, the major ones, sure.

Q. And if you were going to get a history of him, to see what, just what his condition was and what he went through, you would go to the nurses' record, wouldn't you?



A. Partially, yes.

Q. Yes.

A. Of course, the nurses, now the nurses were telephoning me right along and also the internes. You will see where the internes are in there, I am in constant touch with them.

Q. And this man, I believe—well, you have stated when you personally saw him?

A. Yes, sir.

Q. I see. And the record made up here was not made by you, but made by those who were in attendance?

A. Yes, sir.

Q. And saw him and observed him, recorded what he did?

A. Yes, sir.

Q. And how he was? A. Yes, sir.

Mr. Hay: That is all.

#### Redirect Examination.

By Mr. Davis:

Q. Doctor, do these hospital records show any treatment that was given him for delirium tremens?

A. Yes, sir.

[fol. 221] Q. What are they, doctor?

A. Well, this represents my orders for the man. Do you want me to go through the whole thing?

Q. Yes, sir.

A. Well, immediately when he came into the hospital he was treated by me, and I ordered antitoxin, and—

Q. What was that for?

A. That is to prevent lockjaw or gas bacillus, gangrene.

The Court: The question is only directed to what you gave him for the purpose of preventing delirium tremens.

Mr. Hay: Yes.

Q. Yes.

The Witness: That is all you want?

Mr. Hay: I think he testified to that.

A. And gave him two tablespoons full of whisky three times a day, and the next day. the next morning I ordered

four ounces of paraldehyde by the rectum, that is one of the principal things we use in delirium tremens.

I also ordered that he be given some morphine, strychnine. He was getting worse and I increased his whisky from two tablespoons full to an ounce of whisky four times a day. Later on in the afternoon, the day that he died, or the morning when I saw him, I also gave him two teaspoons full of lexophena barbitol, every three hours.

[fol. 222] Now, that is the treatment.

Q. And he was given that? A. Yes, sir.

Mr. Davis: I think that is all.

#### Recross Examination.

By Mr. Hay:

Q. When did you prescribe that treatment?

A. The first whiskey was 2-13, two tablespoons full of whiskey three times a day; the morning of the 14th he got the paraldehyde, he got his morphine. Of course, morphine had been prescribed before. Later in the day he got an ounce of whiskey, and I ordered it instead of two tablespoons full twice a day, to give that four times a day, an ounce four times a day, and at 9:00 o'clock that morning he was ordered to have two teaspoons of lexophena barbitol, and to give that in conjunction with the whiskey, or give it every three hours.

Q. Is it your position, Doctor, that the crushing off of his arm was not the cause of his death?

A. I give the primary cause of his death.

Q. I say, is it your position—

A. The secondary cause, not the primary.

Q. That it did enter into it very vitally, didn't it?

A. It entered into it, yes, sir.

[fol. 223] Mr. Hay: That is all.

#### Redirect Examination.

By Mr. Davis:

Q. How much is an ounce of whiskey, Doctor, how many tablespoons?

A. Well, ordinarily it is given—

The Court: It is a little over half a drink, isn't it?

A. Well, if they use a tablespoon full measure, which is seldom used, which is used medically, which should be

used, it is two tablespoons full ordinarily, which is considered four of the dessert spoonfuls or a teaspoon full.

Q. The answer is—

A. Yes, a teaspoon full, that is the regulation teaspoon full, not the little teaspoon full you ordinarily find on the dining room table. Those are all measured out in measuring glasses.

Mr. Davis: That is all.

Mr. Hay: That is all.

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And thereupon the plaintiff offered further evidence in rebuttal, as follows:

Mr. Hay: May I explain to the Court that I wish to withdraw the plaintiff at this time further for the purpose of putting in the testimony, or offering the testimony of [fol. 224] Mr. Joseph L. Howell, about which there was some discussion yesterday afternoon, at this time, rather than later to put in his testimony.

The Court: Very well.

MILDRED J. COOK, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, in rebuttal, as follows:

Direct Examination.

By Mr. Hay:

Q. Your name is? A. Mildred J. Cook.

Q. Miss Mildred J. Cook. Your profession, Miss Cook?

A. I am a shorthand reporter.

Q. I will ask you whether or not you reported the hearing—

Mr. Davis: Now, Your Honor, we will admit that she reported that hearing, and this is the testimony of Judge Howell.

Mr. Hay: Very well.

The Court: That is all you want, then.

Mr. Davis: And we will further admit that this transcript shows that that testimony is recorded correctly.

Mr. Hay: Thank you very much, Miss Cook.

The Court: Miss Cook is excused.

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[fol. 225] Mr. Hay: We offer in evidence the testimony of Joseph L. Howell, given on the hearing before Your Honor January 21, 1938.

Mr. Davis: We have no objection to the testimony, Your Honor.

(The said testimony is, in words and figures, as follows, to-wit:)

Direct Examination.

Read By Mr. Hay:

"JOSEPH L. HOWELL, a witness of lawful age, being duly produced, sworn and examined, testified in behalf of the movant, as follows:

Direct Examination.

By Mr. Noell:

Q. You were subpoenaed by the plaintiff, were you, Mr. Howell? A. Yes.

Q. Please state your full name.

A. A. J. Howell.

Q. Where is your office?

A. Union Station, St. Louis, Missouri.

Q. How long have you been attorney for the Terminal Railroad Association?

A. It will be thirty-six years the first day of next May.

Q. Have you at any time represented the Southern Railway Company during that time?

A. I never have, sir.

Q. Did you call or write to Henry Hamm to come and see you at Union Station?

A. I requested that Mr. Hamm come in and see me.

[fol. 226] Q. Where did Mr. Hamm work at?

A. He works on the East side.

Q. For your company? A. Yes, sir.

Q. That is, the Terminal Railroad Association?

A. Yes; he is a switchman.

Q. Were you in any way interested in this lawsuit of Mrs. Stewart?

A. I didn't know there was a lawsuit.

Q. How is that? A. I didn't know there was a lawsuit.

Q. What did you talk to Henry Hamm about, then?

A. Well, this is before the Court and I will state the preliminary proceedings. Mr. Haun, of the Southern, came into my office and told me that he had a case on the East side, of the death of a switchman; that he was trying to effect a settlement with the widow; that he had offered the widow five thousand dollars, and that the widow was willing to accept five thousand dollars, but that her son-in-law, Bill Hamm, who is one of our switchmen, would not allow her to make the settlement and was standing in the way of a settlement, because she would get tangled up with a lot of lawyers and they would get what she got; that the Southern had told Mr. Hamm that they would give her five thousand dollars clear and would stand any expense that she was put to by reason of that settlement; that that was all right with him, but he was afraid of claim agents, or [fol. 227] railroad lawyers, and unless they would put it in writing he wouldn't allow his mother-in-law to take it.

He said, 'Those boys think a lot of you. I think Hamm has confidence in you, and I think if you had a talk with Hamm and explained the situation to him it may help matters.'

Q. Did you know Hamm before? A. Yes.

Q. Where did you know him?

A. Hamm has been an old employee on the East side for about nine or ten years.

Q. Do you know him personally, to talk with him?

A. Yes, I met him in my rounds.

Q. When was the last time you talked with Hamm before you asked him to your office?

A. I couldn't tell you that.

Q. He is still working for you? A. Yes.

Q. Have you brought him here to court today?

A. No, sir; I have no business bringing him here to court.

Q. Can you tell us the last time you talked to Hamm before you called him up here to your office, and what business you transacted with him?

A. No; I can't keep track of those things; I talked with so many.

Q. Are you sure that you did know Hamm before he came into your office?



A. I have known Bill Hamm.

[fol. 228] Q. How many thousands of employees have you on the East side? A. On the East side?

Q. Yes.

A. We run an average of between thirty-six hundred and four thousand on the property, and I imagine about fifty per cent, on the East side.

Q. Do you know those men personally, all those men?

A. No; that would be impossible.

Q. Is your work chiefly the legal end of things over there at Union Station, or do you have something else?

A. That is what I am supposed to do, but I do a lot of other things.

Q. Do you have something to do with the operation of trains? A. Not with operation, no, sir.

Q. Is it your business to be acquainted personally with the switchmen?

A. No, sir; I just come in contact with those men.

Q. You say you have known Henry Hamm for nine years?

A. Well, I know Henry Hamm has been over there for nine or ten years.

Q. That is, working for your company? A. Yes.

Q. Is that your own direct knowledge, or what you have learned since this matter came up?

A. I think I knew when Henry got the promotion to switchman. I think it was about two years ago.

[fol. 229] Q. When was that?

A. That is just offhand. I can tell you by the record, but we don't keep these things in our minds.

Q. When had you talked with Mr. Haun, the Claim Agent of the Southern, prior to the time that you ordered Mr. Hamm up there?

A. Oh, I think it must have been a week. In explanation, the day that Mr. Haun was in there I think I called up the East side office and requested that they have Bill Hamm come in and see me his first opportunity. That was the request.

Q. He laid off a day to get over there, didn't he?

A. Yes, sir.

Q. And he received a check for that day?

A. Yes; we always pay; we are under agreement to pay. We can't get out of it.

Q. Was that a check out of the Legal Department?

A. No, that was operating expense.

Q. You originated the check, did you?

A. Yes; in my office.

Q. Did you get a refund on that check from the Southern? A. No, sir.

Q. Does the Terminal bear that expense?

A. It has done so—

Q. Did you send them a bill for the seven or eight dollars?

[fol. 230] A. No, sir.

Q. How much was it, do you remember?

A. I couldn't remember the amount. He is—

Q. For one day?

A. (Continuing) He is a switchman. I would imagine it was six or seven dollars.

Q. And the Terminal is paying that, is that right?

A. It has paid it.

Q. And never sent a bill to the Southern?

A. As far as I know. The Auditor's office might catch that going through and might bill, but I don't think they have.

Q. Would they do that without some information on your part? A. Yes, they can do it.

Q. Anyhow, your company paid him?

A. They paid him for his lost time.

Q. What right have—

The Witness: That is by agreement. When we call one of our men into our office we have to pay them for a day's work, if we only keep them thirty minutes.

Q. Have you any kind of arrangement with the Southern to call in your employees in matters of this kind, or have you done that before?

A. Well, it has been my uniform practice. We are owned by sixteen proprietary lines, operating under a de-[fol. 231] cree of this Court, that we shall act as an impartial agent for all those carriers. If one of those carriers requests anything in my line that I can do for them, I do it readily.

Q. This claim, however, you are not in any way familiar with?

A. I never knew there was such a claim until Mr. Haun spoke to me.

Q. Did Mr. Haun tell you a suit was pending?

A. I didn't know anything about a lawsuit. The first thing I knew about the lawsuit was when you called me. That was the first time I knew there was a lawsuit. I knew there had been an accident there and he was settling up the accident.

Q. I told you that I wanted to verify that you had actually called in this son-in-law?

A. You called me up and bawled me out for interfering with your business.

Q. We were very friendly?

A. Yes, in a friendly way, but at the same time, a rose by any other name would smell just as sweet.

Q. We are still friendly? A. Sure.

Q. You told me that you had done that?

A. I told you that I had requested that Mr. Hamm come into my office and had a talk with him.

Q. I said that I wanted to verify that you had done [fol. 232] that, before calling you in the case, is that correct?

A. I think you used those words, but I don't remember what I said to you.

Q. You said it was part of the game. That is all, Mr. Howell."

Mr. Hay: Do want to read the cross-examination?

Mr. Davis: Yes, sir. This is cross-examination by Mr. Davis, that is me.

(Cross-examination read by Mr. Davis, as follows:)

"Q. Judge Howell, what conversation did you have with Mr. Hamm?

A. Hamm came into my office at about eleven-thirty, I think it was, on November 15th, if I remember the date correctly. He came walking into the office. I said, 'How-do-you-do?'

He said, 'What do you want with me?'

I said, 'Sit down a minute, Hamm. I want to talk to you. I understand that your father-in-law, a switchman for the Southern, was killed over there, and the Southern

is trying to effect an amicable settlement with your mother-in-law and they had about reached an agreement. They are offering to pay her five thousand dollars clear, and she is willing to take it, but that you are standing in the way.'

'Yes', he said, 'I am, because I don't want that woman gypped out of what money she gets.'

I said, 'How about the five thousand dollars?'

He said, 'That is the reason; that is all right to settle for that, if she gets the five thousand dollars.'

[fol. 233] I said, 'What would it take to convince you that she would get the five thousand dollars?'

'Well', he said, 'I want it put in writing.'

'Well, now', I said, 'they can't do that. Railroads don't do that, put things in writing like that. It is not right. If the Southern tells you that they will pay your mother-in-law five thousand dollars clear, you can depend on what they tell you.'

Well, he didn't know whether he could or not. I said, 'You know Bruce Campbell, don't you?'

He said, 'Yes, I do.'

I said, 'If Bruce Campbell tells you that they will see that your mother-in-law gets five thousand dollars clear, and they stand all other expense, would you not believe him?'

'Well', he said, 'I would rather it would be put in writing.'

I said, 'Would you believe me if I would tell you right now?'

'Yes, if you tell me that I will believe it.'

He said, 'Mr. Campbell will tell you the same thing.'

He said, 'If he will do that, that is all right.'

I said, 'Don't let us have any misunderstanding about this, Hamm.' I got this kind of quickly and I didn't understand the situation. I turned around to my desk and called Bruce Campbell. I talked with Bruce

Campbell and stated, in Mr. Hamm's presence, re-stated what I had already stated.

Mr. Campbell says, 'That is correct.' He said, 'Is Hamm there?'

I said, 'Hamm is right here now, listening, and Hamm says it is all right, that he thinks five thousand dollars is a reasonable settlement, if she gets that much money, and I have myself guaranteed him that she will get that, if you say so.'

He says, 'Why not have him come right up here?'

I said, 'That would be fine.'

I said to Hamm, 'Hamm, can you go right up to Mr. Campbell's office?'

He said, 'Sure.'

I said, 'Hop on a car.'

'You stay, Campbell, until he gets there.'

'Go on, Hamm, and whatever Bruce Campbell tells you I will guarantee', and he went out of the office. He said good-bye, shook hands, and away he went. That was the whole conversation.

At that time I was under the impression that it was an accident, and they were settling it up. I knew nothing more [fol. 235] about it, or heard nothing more about it, until Mr. Noell called me up on the telephone and had a conversation about the suit. I said I didn't know there was a suit. I think the next morning I saw in the paper that there had been a suit filed.

Q. Have you seen Mr. Hamm since then?

A. No, I don't believe I have. I know I haven't talked to him.

Q. Did you ever know Mrs. Stewart, the administratrix of the estate?

A. No; no, I never knew there was such a woman.

Q. Did you ever tell Mr. Hamm, either directly or indirectly, that he would be discharged or fired if he didn't—if this settlement was not made?

A. I have given here as near as humanly possible the conversation that occurred. There was not a thing said. I



knew what position Hamm occupied. He was a good man, with a good record, and I knew what position he occupied, and I imagine he assumed I did. He was not even asked about what job he had, or where he worked, or anything about it. There was not a word said about the job; there was not a word said in any way, in a threatening manner. I was talking to him as a friend.

Q. He said nothing about the job at all?

[fol. 236] A. No, sir. It would have been ridiculous for me to have threatened Bill Hamm with his job. He would have laughed in my face and said, 'You can't take my job away, a man that has the seniority that I have.' There has to be some cause for it. That is the agreement with the Brotherhood, and sustained by the Labor Board.

Q. The job was not mentioned?

A. The job was not mentioned.

Mr. Davis: That is all."

(Here Mr. Hay read the redirect examination as follows:)

**"Redirect Examination.**

By Mr. Noell:

Q. Did Mr. Campbell tell you, when you talked to him on the telephone, that there was a suit pending and was to be tried in a week before Judge Moore?

A. No, he did not.

Q. Did Mr. Haun tell you that? A. No, sir.

Q. Mr. Haun personally came to see you? A. How?

Q. Mr. Haun personally came to see you, to talk to you?

A. He came up and said that they had an accident up on the East side and killed a switchman, and, 'I am trying to settle.'

Q. Did he mention my name in it?

A. No, sir. The only way I knew you were in it was when you called me up on the telephone. That was the first I knew there was a suit, or that you were in the suit.

Q. You spoke about Mr. Hamm being your friend.

[fol. 237] A. I call them all my friends.

Q. How often have you seen him in the last nine years?

A. I wouldn't attempt to tell you. I am around the yard office and around through the yards and they speak to me a lot of times. I couldn't tell you their names.

Q. Don't you have a way of calling these men before you without going out to see them?

A. No, sir; I have never gotten into that habit.

Q. You don't call them in?

A. No, sir; when I want anything I usually go and get it.

Q. Is this the first time you called in an employee of the Southern to help them settle a case?

A. That is the first time I had anything to do with the Southern.

Q. Or any other company?

A. I would not say that. Possibly, in thirty-five years, I have talked to some others.

Q. This was a fairly unusual and rare thing for you, was it not, to call in an employee?

A. No, sir. I talked to them, all of them.

Q. The fact that Hamm was called in by you, did he seem to treat you with respect and a certain amount of fear?

A. No, sir. They all treat me with respect; I have never seen one of them afraid of me, though.

[fol. 238] Q. Do you know what effect it has on one of the employees, how they feel, when they are called up to the Legal Department?

A. It is impossible for me to know their feelings.

Q. I mean, by your observation.

A. They always come in very friendly with me. There is a friendly air around there.

Q. Do they seem at ease? A. Perfectly at ease.

Q. Is that what they call being called upon the carpet?

A. No, sir; not in my office.

Q. You spoke about the job and the union: Are there not things that every railroad man, in the operating department, may overlook or do in the course of a day's work, practically each day, that the company could get him on the technical violation of the rules, and discharge him?

A. I imagine the first part of your question is all right, but the last part not.

Q. There is no technical violation of rules that you could discharge a man for? A. Oh, yes.

Q. I mean, it happens in the work of every workman in the handling of trains, and so forth?

A. They are perfectly human; they make errors.

Q. Is it the understanding of your men that on a matter of this kind they wouldn't be discharged for failure to [fol. 239] act in a matter of this kind, but on some other infraction of the rule, some other excuse?

A. Possibly more in the operating department. I wouldn't know.

Q. You have not discussed these things with them over this period of years?

A. Well, yes, we have had cases in which questions have been discussed.

Mr. Noell: I believe that is all.

Mr. Davis: That is all."

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Mr. Hay: Now, Mrs. Stewart, will you come back, please? Take the witness stand.

Oh, Your Honor, if I may, I would like to put on another witness who wishes to get away.

The Court: Very well.

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ARTHUR STEWART, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, in rebuttal, as follows:

Direct Examination,

By Mr. Hay:

Q. State your name, Mr. Stewart, your full name.

A. Arthur T. Stewart, Salem, Illinois.

Q. Salem, Illinois. You are a brother of the deceased, [fol. 240] John Stewart? A. Yes, sir.

Q. You are younger, I presume.

A. I am younger, yes.

Q. Than your brother John.

The Court: Speak a little louder, Mr. Stewart, so that [they] jurors can all hear you.

Q. Now, Mr. Stewart, reference was made here to someone, I think a Mr. Reno, coming to see you to talk to you about the settlement of the case of Mrs. Stewart. Will you tell us what occurred in that connection?

Mr. Davis: Your Honor, may we object to the testimony of this witness on the same grounds that we objected to the testimony of Mrs. Stewart yesterday? I say, may we object to the testimony?

The Court: I do not know what your grounds were. I do not know whether they apply in this case or not.

Mr. Davis: Yes, I think they would.

Mr. Hay: May I say, before the gentleman makes the objection, we propose to follow up and show that Mr. Reno was acting in the interest and on behalf of Mr. Haun, the claim agent, in visiting this gentleman.

We will follow that up.

Mr. Davis: I am not making it on that ground. I am making it on the grounds that I made yesterday.

The Court: All right. State your objections. Go ahead, [fol. 241] make your objection now.

Mr. Davis: That this is a collateral attack on a judgment and order of the Probate Court of Illinois, that evidence cannot be adduced relative to fraud or duress—

The Court: Oh, yes. That objection may run to this, and it is overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Davis: Then we want to object further, Your Honor, as to some of this testimony on the ground that the testimony of this witness would neither show fraud nor duress.

Mr. Sheppard: And on the further ground, Your Honor, that there is no showing that the Southern Railway Company is bound by anything that a man named Reno did.

The Court: Of course, if Mr. Hay does not connect it up properly I will sustain a motion to strike it out.

Mr. Hay: Yes. We propose to show that before we are through, before the case is completed.

Q. All right. Go ahead and tell us what was said.

A. Well, he visited me three times.

**Q.** When was the first time?

**A.** The first time was along the 1st of October; the second time I would say along the last of October, the 24th [fol. 242] or 25th, something like that, I kept no dates because I did not feel at that time that it was necessary, and then the next time along the first days of November, I would say about a week or a little more from the second visit.

**Q.** What did he say to you?

**A.** Well, the first visit he introduced himself and told me that he wanted to talk to me in regard to the mishap of my brother, who was killed on this Southern Railroad, that he was helping and Mr. Haun had asked him to come and see me. They had gotten my connection over—I worked with Pollock Lumber and Coal Company in Salem, and he come to talk to me to see if I could not be influential in getting my sister-in-law to settle with the Southern Railroad, that Mr. Haun had seen her and never been able to get a settlement, and he wanted me, he wanted me to help him in assisting to get her to settle, and that they would give her five thousand dollars, but that they would not settle through the attorney she had; that if I would write a man by the name of Walter Stillwell at Hannibal, Missouri, he would come to Salem, and that I could get my sister-in-law to come there, and that he would get the five thousand dollars for her within four days' time; that Stillwell already knew all about the case, all I would have to do, write to him and he would come.

That was the first visit.

[fol. 243] **Q.** That was the first visit. What did he say to you the next time he came?

**A.** The second visit he came and it happened that he got there just the same day that my sister-in-law had come to Salem. I had not seen her in between the time, and I carried the message to her that he had given me.

Of course, I knew none of the makings up of the case up until that time, so I delivered the message to her that he had given to me, and, well, when they came into the house my wife called me to come down from the office, that my sister-in-law and her son and his daughter was at the house, and was going to leave right away, would not be



there but a few minutes. So I went down to the house, to see them, and delivered this message, and when I came back to the office in a little while, Mr. Reno came and I told him I had just delivered the message, and that they just left my house, and were headed for Hillsboro, and would be back in East St. Louis the next day, and he said he would try to see them then, and he laid the proposition to me again, what the Southern would do, Mr. Haun would give her this five thousand dollars, and it was a case that he was working in the interest of them, and that if she did not take that she would not get nothing.

[fol. 244] Q. Did you communicate what he said to Mrs. Stewart?

A. I communicated it to Mrs. Stewart, but did not take no part in it.

Well, that, in about the, sometime during the first days of November, he came back to see me again. He said he had been to the house but he had not been able to see her, and that the daughter had treated him [cooly], and that he had come back to see if I could not take some hand in this, and I told him that I had carried the message, but if he wanted me to take pressure to bear, that I would not do it, because this woman was only a sister-in-law of mine, was not my mother, and that she had grown children, and if they seen fit to turn the offer down I would not have tried no pressure to either force her to take it or do nothing about it.

Q. Did I understand you to say that they would not have any dealings with the lawyer she had employed?

A. Oh, they would have me to write to Stillwell at Hannibal, Missouri, and Stillwell would come to Salem.

Q. Did you understand from that that this was a lawyer at Hannibal? A. Walter Stillwell, Hannibal, Missouri.

Q. Walter Stillwell, Hannibal, Missouri. Now, did anyone else come to see you?

[fol. 245] A. No, sir.

Q. I see. Well, that is all you know about the matter?

A. Yes, sir. I never wrote to Stillwell because I did not propose to take any active part in it.

Q. What is your business, Mr. Stewart?

A. I am manager of a retail lumber yard at Salem, Illinois, known as the Pollock Lumber and Coal Company, with head offices in St. Louis.

Q. Did you know this man Renow before?

A. Never seen him.

Q. You had never seen or heard of him?

A. He told me he talked to the sister-in-law a time or two, could not tell her his name at that time, I would say he had stated some business he was in that made it impossible for him to tell her his name, but now he was in some mutual insurance company, with offices in the Boatmen's Bank Building, and that he could tell me his name, and I would not be sure, I think he said it was Claude Renow, but anyway it was Renow, and left his card.

Mr. Hay: That is all.

#### Cross-Examination.

By Mr. Davis:

Q. Mr. Renow did not threaten you in any way, did he?

A. No.

[fol. 246] Q. He just came up to you?

A. And asked me—

Q. And asked about the settlement?

A. No. He asked me to assist in getting her to take it.

Q. And you told him you would not do that?

A. The third time, no, the first time I did not know whether it was best for her or worst for her. I simply took the message, but after I talked to her, which was the same day, the second time, you see, but when he talked to me the first time, I did not know anything about the facts because I was not in and out of East St. Louis very often. My business is there and I did not know whether the five thousand dollars, or any of the conditions, so I told him I would deliver the message when she came and seen me, and I delivered the message to her, and she told me that she would not take it. Then, of course, she told me various ones, Mr. Haun and all had been trying to get her to take it.

Q. Don't tell what she said.

A. Well, that is—

Q. You delivered the message to her?

A. I delivered the message.

Q. Now, Mr. Renow was polite to you, wasn't he?

A. Oh, yes, yes.

[fol. 247] Q. He was a gentleman to you?

A. Yes. He was in my office, he had to be.

Q. He came to you as man to man? A. Which?

Q. He came to you as man to man?

A. He came to me to lay his proposition, to ask me to assist him in getting her to settle. He said he was a friend of Mr. Haun's and was doing this because Mr. Haun had asked him to.

Q. And that is all he said, you say he did not threaten you or do anything of that nature to you?

A. Oh, there would not be no occasion to do that.

Q. There would be no occasion to do that. How long have you known Mrs. Stewart?

(No response.)

Q. How long have you known Mrs. Stewart?

A. Mrs. Stewart? Well, I think that probably thirty-seven or thirty-eight years, something like that.

Q. And she has—

A. That is, you mean this Mrs. Stewart, that is John Stewart's widow?

Q. Yes, John Stewart's widow.

A. Thirty-seven or thirty-eight years.

Q. She has always been an intelligent woman?

A. As far as I know.

Q. Well, you have seen her.

[fol. 248] A. I have seen her. I am no judge of that, but I never knew her to be adjudged insane or anything like that.

Q. Well, she has always been normal, as far as you could tell? A. Yes, sir.

Q. Is that true?

A. As far as I know, yes.

Q. Now, did you tell her to study this out and do as she pleased? A. I surely did.

Q. You told her it was a matter for her?

A. She told me that she had already studied it out, the proposition had been presented to her a number of times by different people, that she said this Mr. Renow had been to see her, when I described him she said, "That is the fellow that came to see me that refused to tell his name."

Q. That is what she said? A. Yes.

Q. And you told her though to use her own judgment, do whatever she pleased about it, but she, you say, she refused to accept, was it five thousand dollars or less money?

A. Five thousand dollars at that time.

Q. She refused to accept it.

Mr. Davis: I think that is all.

Mr. Hay: That is all.

[fol. 249] HATTIE McKELVEY, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, in rebuttal, as follows:

Direct Examination.

By Mr. Hay:

Q. Your name, state your full name, Mrs. McKelvey, please. A. Hattie McKelvey.

Q. Where do you live?

A. Coulterville, Illinois.

Q. That is about how far from East St. Louis?

A. About fifty miles, I would say, approximately.

Q. Are you the niece of Mrs. Stewart?

A. Yes, sir.

Q. Are you the niece to whom she referred, at whose home she was when certain gentlemen came to see her in connection with her case? A. Yes, sir.

Q. Were you at home at the time? A. Yes, sir.

Q. Will you tell just what occurred when this gentleman came? A. Well, he came—

Mr. Davis: Now, Your Honor, may we object to this testimony on the same ground that we objected to Mrs. Stewart's testimony that I have heretofore related to?

[fol. 250] The Court: Very well. The same objection, and overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. And by gentleman, I am referring to Mr. Haun.

A. Mr. Haun came to my house.

Q. When was that, Mrs. McKelvey?

A. Why, it was on April 20th.

Q. 1937? A. Yes, sir.

Q. All right. Just go ahead and tell us what occurred.

A. Well, he came to the house, and I not knowing him I called my aunt to the door. She had told me she hired an attorney. I thought that was who it was.

Mr. Davis: Don't state what you thought. Just state what you did.

A. Well, that is the facts, and I asked him in, and he said no, he would not come in. And he took her out in the car. It was a rainy day, and she sat out there all afternoon, and her being in the state she was in, I was worried about her.

Mr. Davis: Now, we object to that. Just state what happened, what he did.

A. Well, he kept her out there practically all afternoon, and I do not know what happened while he had her out there.

[fol. 251] Q. I understood you to say you invited him in the house? A. I did. He refused to come in.

Q. What was your aunt's condition at that time?

A. Well, she was very nervous, just very nervous. We came to East St. Louis—

Mr. Davis: That is a conclusion, your Honor. We ask that it be stricken out.

Mr. Hay: Whether or not one is nervous or not, I think is a question of fact.

✓ The Court: The objection is overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

The Witness: We came up and got her, to take her out there to rest. We thought we would get her away from all of it.

• Mr. Davis: Now, we ask that that be stricken out. Don't state—excuse me, may it please the Court.

The Court: If you will make a motion the Court will take care of it.



Mr. Davis: I move that it be stricken out.

The Court: What be stricken.

Mr. Davis: The last answer.

The Court: The last part of the answer as to what she thought, that may be stricken out.

[fol. 252] Mr. Davis: Yes.

The Court: Yes.

Q. Why did you take her down to your home?

Mr. Davis: I think that is a conclusion, why they took her down there is immaterial.

The Court: Sustained.

Q. Had you seen her up in East St. Louis?

A. Yes, sir.

Q. Had you been in East St. Louis when either Mr. Haun or this Mr. Renow had been around to see her?

A. No, sir.

Q. I see, but after she had remained up here for a while following the death of Mr. Stewart, you took her down to your home?

A. Yes, sir.

Q. How long had she been down there before Haun showed up down there?

A. I think it was the next day. It was not but just a day or two, it was not more than two days, I know.

Q. Now, you say he kept her out in this car practically all afternoon? A. Yes, sir.

Mr. Davis: Now, wait a second. I object as to the form of the question, that he kept her out there.

[fol. 253] The Court: How?

Mr. Davis: I object to the form of the question, that he kept her out there.

The Court: Very well. Sustained.

Mr. Hay: I will change the form.

Q. I understood you to say that she was in the car and he was talking, they were in the car together practically all afternoon? A. Yes, sir.

Q. Now, what was her condition when she returned from that car to your house?

A. Well, she had a nervous chill, at a couple of hours after she came in.

Q. Where did she spend the night?

A. After she got reconciled enough we took her to Salem to talk to Mr. Stewart, and she stayed with another cousin of mine after we returned.

Q. And stayed at Coulterville? A. Yes, sir.

Q. With another relative?

A. Just a block or so from my house.

Q. Now, did you see Mr. Haun any more?

A. He was back the next morning.

Q. Did he see Mrs. Stewart the next morning?

[fol. 254] A. He did not see her, no. My cousin would not let him in the house. I went over there with him.

Q. Did you see your aunt that morning?

A. Yes, sir.

Q. What was her condition that morning?

A. Well, she was just all worked up and crying, having one chill after another.

Mr. Hay: That is all.

#### Cross-Examination.

By Mr. Davis:

Q. Now, how many times did you see Mr. Haun?

A. I saw Mr. Haun three times.

Q. Now, when was the first time you saw him?

A. It was on April 20th.

Q. And when was the next time you saw him?

A. The 21st, the next day.

Q. And when was the next time you saw him?

A. Well, it was not but a few days, I do not know the exact date.

Q. Two or three days afterwards?

A. I think it was some week, I would not be positive, but it was not more than a week from that time.

Q. So the only times you saw Mr. Haun was in April?

A. Yes, sir.

Q. 1937?

A. Until I came up here to the trial.

[fol. 255] Q. Yes, until you came to the trial. Now, he came there that first time at your home at Coulterville?

A. Yes, sir.

Q. And he asked for to see Mrs. Stewart?

A. Yes, sir.

Q. And Mrs. Stewart came out, did she?

A. Yes, sir.

Q. And then he asked her if she would not go out and talk to him in the car?

A. He did.

Q. And that is all that happened, was it?

A. As far as I know. I was not out there.

Q. As far as you know, and that is all that happened, and that is all that happened, and he merely asked her in a polite voice if she would not go out there, didn't he?

A. He told her he wanted to talk to her.

Q. He told her he wanted to talk to her?

A. Would she come out in the car.

Q. What was the word that he said?

A. I do not remember exactly.

Q. Did he say, "Mrs. Stewart, I would like to talk to you"?

A. I think I walked back in the other room when he asked for her, and I do not know exactly, I asked him to come into the house. I said, "You can talk to her in the [fol. 256] front room." He said, "No, we will go out in the car."

Q. Then you went back on in the house?

A. Then I went back on in the house.

Q. Then, did you hear him ask her to go out in the car with him?

A. Only what he told me, that he would not come in, that they would go to the car.

Q. You did not hear him ask her to go to the car then?

A. I just said he would not come in. He said, "We will go out in the car and talk."

Q. He said it to you? A. Yes.

Q. But you did not hear him ask Mrs. Stewart to go out?

A. Well, that was the same as asking her, wasn't it?

Q. No, I am asking you if you heard.

A. Why, certainly. He told me he would not come in, that they would go out in the car. Wasn't that asking her?

Q. Did Mrs. Stewart hear that?

A. Why, certainly. She was standing there.

Q. She was standing there?

A. Yes.

Q. And that is all that was said, "Mrs. Stewart, won't you go out in the car with me", something like that?

A. I won't say he said those exact words. He refused to come in the room. That is all I know.

Q. What were his exact words, as well as you remember, that is what I want?

[fol. 257] A. Well, he came to the door and asked for Mrs. Stewart. He told me his name but I did not understand what it was, and I told her, we always called her Polly, "Aunt Polly", I said, "Aunt Polly, there is a man here to see you". I said, "I asked him in", and she went to the door, and she begin trembling as soon as she saw who it was, and I walked to the door with her, and I said, "Come on in the front room, you can talk in here." He said, "No, we will go out in the car and talk", and that is all I know about it.

Q. Was it—that was on the 20th? A. Yes, sir.

Q. That was on the 20th. Now, you did not hear Mr. Haun threaten Mrs. Stewart in any way?

A. Why, he did not threaten her, no, not that I know of. I don't know why he would.

Q. And he did not threaten you at that time?

A. No. He had better not.

Q. I see. I see. Now, nobody else had better threaten you? A. No, they better not.

Q. And then afterwards, after they got out in the automobile talking, what time was it when they went out there?

A. I could not say that, it was after dinner.

Q. You mean, you call 12:00 or 1:00 o'clock dinner?

A. Yes, sir. Country towns always do.

Q. That is the way I was raised, we call it dinner. And [fol. 258] it was after that? A. Yes, sir.

Q. Now, can you recall just about the time?

A. No. I would not make no attempt to, but I know she was out in the car a couple hours.

Q. A couple hours? A. At least that long.

Q. And your best recollection, to your best recollection she was out there a couple hours? A. Yes, sir.

Q. Talking to him. And after that she came on in to the house, did she?

A. She came in and went to bed.

Q. And Mr. Haun drove away? A. Yes, sir.

Q. Now, when was the next time—now, that same night, Mrs. Stewart drove to Salem, did she not?

A. Yes, after she laid down a couple hours and got composed, we took her to Salem.

Q. How far is it from Coulterville to Salem?

A. I judge it is sixty miles, but we stopped in Centralia a while, and she rested.

Q. That is sixty miles? A. Sixty or seventy.

Q. Where is Coulterville in Illinois?

A. Randolph County.

Q. I know, but is it the Southern part?

A. The Southern part.

[fol. 259] Q. What is that? A. The Southern part.

Q. Where is Salem, what county? A. Marion.

Q. Marion County, that is about sixty miles?

A. I judge it is.

Q. And who went over there with her?

A. Yes, sir. Yes, sir, I was with her.

Q. Did you drive? A. No. My cousin drove.

Q. Your cousin drove the machine. And then she went over to another cousin's in Salem, that was the one who drove?

A. No. She went to Mrs. Stewart's in Salem, the one that was just on the stand.

Q. And she stayed at Mr. Stewart's that night?

A. No. We went back after an hour or so.

Q. Went back to Coulterville? A. Yes, sir.

Q. After talking to Mr. Stewart you went back to Coulterville that night? A. Yes, sir.

Q. So then she drove—what time did you leave for Salem that afternoon?

A. Oh, we left, I judge in an hour after Mr. Haun left, we went to Salem.

Q. And what time did you get to Salem, do you know?

A. No, I do not.

Q. How long did it take you to drive there?

A. I do not remember that, either.

[fol. 260] Q. And then when did you start back that night, do you know? A. We started back after midnight.

Q. After midnight, and then Mrs. Stewart drove with you back to Coulterville? A. Yes, sir.



Q. After midnight, so that day, why she drove 120 miles, that is about eight hours, would you say, or ten hours?

A. Well, I don't know just how many hours it was. I know—

Q. But anyway, it was—you started after midnight?

A. We went back home after midnight.

Q. Yes, after midnight? A. Yes.

Q. That was then the morning of the 21st?

A. I suppose it was.

Q. About what time did you start, do you know?

A. Why, I just got through telling you that we left in the afternoon.

Q. I know, but to start back, I mean, you say after midnight. Do you know when it was after midnight?

A. No, I do not.

Q. You do not know when it was. Now, you say you saw Mr. Haun once more, twice more?

A. He was back at the house the next morning.

Q. He was back at the house the next morning, and he did not see Mrs. Stewart the next morning?

[fol. 261] A. No, only just talked to her from the front door into my cousin's bedroom.

Q. He spoke to her there, and he said, "Mrs. Stewart, I see you are not feeling well. I won't stay", or something like that? A. "I will come back."

Q. Ma'am? A. "I will be back".

Q. I see, he said, "I see you are not feeling well this morning and I will be back." A. Yes.

Q. Now, when was the next time you saw him?

A. Just in a day or so. I do not know just exactly, but it was all within one week.

Q. And where was that?

A. He came to my house.

Q. And was Mrs. Stewart there?

A. She was not there.

Q. She was not there?

A. She had come back to East St. Louis.

Q. He asked you if she was there? A. He did.

Q. And you told him she was not there? A. I did.

Q. And he did not threaten you in any manner at any time? A. I do not know why the man should threaten.

Q. But I say, he did not do it?

[fol. 262] A. No.

Q. And he was polite to you, all the time, wasn't he?

A. Yes.

Q. Acted as a gentleman?

A. The third time he came back he was telling us that he would absolutely have no dealings with Mr. Noell, the railroad company would spend ten thousand dollars rather than let him take the case.

Q. That the railroad would spend ten thousand dollars rather than let Mr. Noell have the case?

A. That is what he said in my kitchen, right in the presence of my husband.

Q. You do not know whether they had cause for that or not, do you?

A. No, I do not know nothing about the railroad company.

Mr. Davis: That is all.

Mr. Hay: That is all.

(Witness excused.)

Mr. Hay: Your Honor please, I think it will not be possible for us to finish with Mrs. Stewart this morning.

(Here ensued a colloquy between the Court and counsel out of the hearing of the jury, and off the record.)

The Court: You may announce that all parties and witnesses and jurors in the case on trial will be excused until Monday morning at 10:00 o'clock.

[fol. 263] At this point, 12:30 P. M., Saturday, June 10, 1939, an adjournment was had until Monday, June 12, 1939, at 10:00 A. M.

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Pursuant to the said adjournment, the Court convened at 10:00 o'clock A. M., Monday, June 12, 1939, and the following proceedings were had:

The Court: Proceed, Gentlemen.

Mr. Davis: In order to save the examination of this witness, Mr. Harding, I will admit on December 6, 1937,

Mrs. Stewart tendered back five thousand dollars to Mr. Wiechert, for the Southern Railway Company.

Mr. Noell: With ten dollars added as interest, since the check did not clear until the 6th of December, 1937. It cleared on that date, having gone to Washington, D. C. and back, and there was ten dollars added for that six days' interest, that took the time for the check to clear.

Mr. Davis: Is that true, Mr. Wiechert?

Mr. Wiechert: I did not count the money.

Mr. Davis: Well, I haven't any objection to that. They tendered the money back.

The Court: What?

Mr. Davis: I haven't any objection to that. They ten-  
[fol 264] dered the money back.

MRS. MARY STEWART, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further on behalf of the plaintiff, in rebuttal, as follows:

#### Direct Examination.

By Mr. Hay:

Q. Mrs. Stewart, I want to ask you one or two questions on matters that I asked you about when you were on the stand the other day, just as preliminary.

What is the name of the gentleman that you state came to see you in Kentucky?

A. His name was Hanley, known as Blond Hanley, an attorney.

Q. How many times do you say that Mr. Renow came to see you?

A. He came to see me twice, but he came to see my daughter twice, I mean four times.

Q. I believe you stated in your testimony the other day that the last time you talked to Mr. Haun, the claim agent of the Southern, was down at Coulterville.

A. Coulterville.

Q. In April of 1937? A. Yes, sir.

Q. It was after that that you went down in Kentucky?

A. After that?

[fol. 265] Q. Yes. A. Yes.

Q. And it was after that that you had a talk with your brother-in-law, Mr. Arthur Stewart? A. Yes, sir.

Q. Was it also after that that Mr. Renow came to see you?

A. Yes, sir. He came to see if I had gotten home yet.

Q. Now, Mrs. Stewart, in this talk with Mr. Haun down at Coulterville, my recollection is that you stated that the amount that he offered you at that time was four thousand dollars? A. Four thousand dollars.

Q. Did the gentleman down in Kentucky, Hanley, make an offer to you?

Mr. Sheppard: We object to that.

The Witness: \$4,500.

Mr. Sheppard: We object to that, Your Honor. The witness answered while we were objecting, and therefore we will ask to move to strike.

The Court: Sustained.

Mr. Sheppard: For the reason that there is no showing that he represented anybody connected with the defendant in this case.

Mr. Hay: We will follow that testimony, showing that he did act at the instance of Mr. Haun.

[fol. 266] The Court: Very well, proceed.

Q. What offer did he make you, Mr. Hanley?

A. \$4,500.

The Court: That is admitted on your promise to connect it up.

Mr. Hay: And if we are unable to do that, we will consent that it be stricken.

Q. \$4,500? A. \$4,500.

Q. Now, when was the first time that you heard of the willingness of Mr. Haun or anyone else representing the Southern to pay \$5,000?

A. My brother-in-law said Mr. Renow made that statement to him.

Q. That was in October, was it not? A. In October.



Q. You heard the testimony of Mr. Stewart about communicating to you what had been said to him by Mr. Renow? A. Yes, sir.

Q. That was correct, was it? A. Yes, sir.

Q. He did communicate what had been said?

A. What had been said.

Q. What had been said as represented by Mr. Renow. That was in October.

Now, to refresh our memories, you received a telegram which was, or rather a telegram to Mr. Hamm was transmitted to you, which was under date of—I want to get that [fol. 267] date if I may. November 23, 1937?

A. Correct.

Q. Now, when you learned about this telegram where were you? A. At Castleton, Illinois.

Q. Castleton, Illinois. And from or through whom did you learn of this message from Mr. Haun to Mr. Hamm?

A. My son-in-law and his wife, my daughter.

Q. Mr. and Mrs. Hamm? A. Yes, sir.

Q. Where did you see them?

A. At their home in East St. Louis.

Q. Does that mean that you came from Castleton to their home? A. To their home.

Q. Upon receipt of this message? A. Yes, sir.

Q. Now, did you learn from Mr. Hamm that he had had a talk with Mr.— A. Mr. Howell.

Q. Mr. Howell? A. Yes, sir. He had been called to the office.

Q. What did Mr. Hamm say to you?

Mr. Davis: Now, we object to that, Your Honor. We are not bound by anything that Mr. Hamm said.

Mr. Sheppard: It is hearsay besides.

The Court: Overruled.

[fol. 268] To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Davis: And it is hearsay, besides it is self-serving.

Mr. Hay: I do not see or think that it needs any argument to show the admissibility of this, Your Honor. Mr. Hamm had been called in as testified to by Mr. Howell, for



the express purpose of having him see if he could not accomplish a settlement of this case, and pursuant to that—

The Court: I passed on it. Go ahead.

Mr. Hay: I beg your pardon.

Q. What did Mr. Hamm say?

A. They had called him to the office to see Mr. Howell, and Mr. Howell asked him about this case. He said he did not know there were a case of that kind.

Q. That Mr. Howell said he did not know?

A. No, not until he told him, and he said that he had been notified to see if he could not urge the case along, and get me to take that amount of money, and he said he did not know him, and he did not want to, you know, to urge him, but he said just to see if he could not talk me into taking that amount, and then he told him to go and talk to Mr. Campbell.

Q. Did he say he had talked to Mr. Campbell?

A. He had to, yes. He said, "You go, I would advise you to go".

[fol. 269] Q. What else did Mr. Hamm say?

A. Well, it meant his job, so he better go.

Mr. Davis: He said what?

A. It meant his job, and he had better go.

Q. And what did he say to you with respect to the settlement of the case, Mr. Hamm I am referring to?

A. Well, he said that he would not get it through the attorney, and that that might mean his job, and I better go see, he better go see the attorney, Mr. Campbell.

Q. Well, what effect did that have on you?

Mr. Davis: Well, we object to any effect it had on her.

Mr. Hay: That is the whole gist of this case, Your Honor.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

A. Well, Mr. Hamm said that they was not hiring men his age, or from his age to thirty years, and he might lose his job.

Q. Well, what did you say, or what was the effect on you?

A. Well, I knew he had been working for the company a long time, and if he would lose his job he might not get another one, and he had a family, a wife and two children to keep.

[fol. 270] Q. Now, up to that time, Mrs. Stewart, had you ever indicated to anybody anywhere that you would take five thousand dollars?

A. No time.

Q. After Mr. Hamm told you that, what was your attitude toward the taking of the five thousand dollars?

A. Well, I was very worried, and at the time I thought well, he, if he would lose his job, they would suffer, and that is what I told him, that he would lose his job, he might not get any more, and I was told by Mr. Wiechert, that it had been done, he could lose his job.

Q. I see. Was that after you had—

A. After I had the talk with Mr. Hamm and went to Mr. Campbell's.

Q. Oh, I see. Now, pursuant to this talk with Mr. Hamm, you then went to the office of Campbell & Wiechert?

A. Yes, sir.

Q. And you say that at that time Mr. Wiechert said to you, when reference was made to the possibility of Mr. Hamm losing his job, that that had been done?

A. It had been done, it could be done and it had been done.

Q. Who was present when that conversation took place?

A. Well, my daughter and Mr. Felsen, and I think Mr. Haun.

Q. Felsen, is that the lawyer that—

A. That was the attorney.

[fol. 271] Q. That Mr. Campbell called in to—

A. Yes, sir.

Q. Just a moment. Mr. Felsen, is that the lawyer that Mr. Campbell called in to represent you? A. Yes, sir.

Q. And this took place in the office of Campbell & Wiechert, the attorneys for the Southern Railroad Company? A. Yes, sir.

Q. Had you ever been in that office before? A. Never.

Q. Had you ever seen either Campbell or Wiechert before?

A. I had seen Mr.—no, I don't think I had seen Mr. Wiechert. I see Mr. Felsen, but not Mr. Wiechert.

Q. Mr. Felsen, you mean, came to see you with a Mrs. Pouch? A. Yes, sir.

Q. Before you hired a lawyer, is that right?

A. Yes, sir.

Q. All right. Now, after these conversations with Mr. Hamm and with Mr. Wiechert, what did you do? A. How?

Q. What did you do after these conversations with Mr. Hamm and Mr. Wiechert, I mean with respect to agreeing to take five thousand dollars?

A. Well, I was just to where I did not know what to do, [fol. 272] and the more I studied, I thought of those children that would suffer, you know, and if he would lose his job I knew they would suffer, and I took the money.

Q. You took the money?

A. When he said I would get it no other way.

Q. Now, it was after these conversations? A. Yes, sir.

Q. That all these papers were—

A. Were made out when I got there.

Q. May I ask, were the papers already made out when you got there? A. Yes, sir.

Q. But it was after that that you agreed to take the money, and then went over to Belleville and went through the form of a settlement?

A. Yes, sir.

Q. I see. And it was after that that you signed the release, was it? A. Yes, sir.

Q. Up to that time had you signed anything in connection with the settlement?

A. I don't think I had.

Q. Had you agreed with anybody to take five thousand dollars until after the talk with Mr. Hamm and Mr. Wiechert? A. No, sir.

Q. Had you ever indicated to anybody that you would [fol. 273] take five thousand dollars? A. No, sir.

Q. Was five thousand dollars as much as you thought you ought to have?

A. Why, certainly not.

Q. The doctor was on the stand yesterday, and he testified that you had said to him when he came into the hospital

to see your husband, that he had been on a drunk for three or four days.

A. I do not see how he could be on a drunk when we hunted a house and moved, and straightened our things. A man drunk could not do that, I don't think.

Q. Did you make any such statement as that, to the effect—

A. No, sir.

Q. Did you ever make a statement to him about his being drunk any time, make the statement to this doctor?

A. No, sir.

Q. Did you ever make a statement to him?

A. No, sir.

Q. Your husband did drink liquor?

A. Oh, about like ordinarily a man would drink.

Q. Do you know of any time of his being what you would call drunk?

A. I never seen him when he could not get around or do anything he wanted to do at no time.

Q. He worked, as you testified before, fairly regularly, [fol. 274] did he not?

A. Regular, yes, sir.

Q. I believe something during the year before he was killed he had something like poison ivy on him?

A. Well, Doctor Thie at the Missouri Pacific [—] something known as a child disease or breaking out. I had it first on my hand, and I went to the doctor, and he gave me a prescription, and I went back for him.

Q. Was that during the last year of his life?

A. Yes, sir, the summer before.

Q. Did he lose some time as a result of that?

A. Yes, sir.

Q. Now, in the years before that, had he lost any time on account of such a thing as that ivy, mentioned?

A. Well, he had been a steady worker.

Q. I see. A. Yes, sir.

Q. And I believe you testified that he turned over, ordinarily turned over his pay/check to you?

A. Yes, sir.

Q. And out of that you were supported and the family was supported?

A. Yes, sir.

Q. I mean you and he were living together?

A. Yes, sir.

Q. Now, you say that during the years preceding this last year when he had this trouble, you say he worked steadily?

[fol. 275] A. Yes, sir.

Q. Would you say he worked more or less steadily or otherwise than the last year of his life?

A. Sure, he has worked of course not the last year or two, but he has worked most every day. But the last year or two he figured that he should give some of the other men a break several days at a time,

Q. And when he laid off the extra man would get the opportunity to work? A. Sure.

Q. I believe you stated that at the time of his death he was in good health?

A. Yes, sir. He was never sickly, he was never a sickly man at no time.

Mr. Hay: That is all.

Mr. Sheppard: Your Honor, just to keep our record straight, may we move to strike all the testimony with respect to what her son-in-law, Hamm, told her, first for the reason that it is hearsay; second, for the reason that there is no evidence showing that he had any authority to speak on behalf of the defendant in this case; and third, that it does not tend to prove any issue of fraud or duress.

The Court: Overruled.

Mr. Sheppard: Save an exception.

[fol. 276] To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

#### Cross-Examination.

By Mr. Davis:

Q. Now, Mrs. Stewart, in February, the only month of February, 1907—wait a minute. I mean 1937, he was injured on the 12th day of February, 1937?

A. About that time.

Q. Yes. Well, that was the date, wasn't it?

A. Well, I won't say for sure, but it was about that time.

Q. About that time; and during that time he got twenty-four dollars, so the record shows.



A. Well, not having to remember, I don't remember that.

Q. I say, the record shows that.

A. Yes, sir.

Q. Now, how much did he get a day, six dollars and something, wasn't it?

A. Yes, sir.

Q. Six dollars and something a day. Therefore, if that is what he got he did not work over four days during that month of February, 1937?

A. Well, if he got injured he could not work.

Q. I know, but I say from the 1st to the 12th, the day of his injury he only worked four days if he got twenty-four dollars?

[fol. 277] A. Yes, sir.

Q. Not over four days. Now, you say that you moved during that time?

A. Yes, sir.

Q. And you moved from the one place around the corner?

A. Yes, sir.

Q. And you said you did not have any furniture?

A. We did not, but you don't get just what you really need when you rent furnished rooms.

Q. But anyway, you did move around the corner. Now, what did you take?

A. Well, I could not take—took things I needed in my work.

Q. You took your clothing from the place you moved from, didn't you?

A. Yes, but you have to have other things besides clothing to keep house.

Q. What other things did you take?

A. I could not tell you that; suitcases and box and trunks.

Q. Did you move any furniture?

A. Yes, sir.

Q. Now, how did you move them, with a van?

A. We did not need a van because we had two or three men to help carry those things, the heavy things that he could not carry.

[fol. 278] Q. Now, how many trunks did you have?

A. Well, several trunks, several suitcases.

Q. Now, what do you mean by several?

A. Well, several would mean more than one or two.

Q. Well, you had three or four?

A. I judge four.

Q. And were your clothings in a trunk?

A. Some in a trunk, some in suitcases and some in boxes.

Q. Now, how many suitcases did you have?

A. We had four.

Q. Four suitcases, and how many boxes did you have?

A. Why, I am not supposed to remember all the boxes you have when you move.

Q. Just to the best of your recollection, how many boxes did you have?

A. I could not tell you exactly.

Mr. Hay: Give him your best recollection; he seems to want to know.

Q. Did you have one? A. Probably eight or ten.

Q. Now, how far was it that you moved?

A. Two blocks.

Q. Two blocks, and you carried all those by hand?

A. Yes, sir.

Q. And the men carried them all by hand?

A. Well, the men carried the radio, and things that he [fol. 279] could not carry.

Q. By hand. Now, how long did it take you to move?

A. Well, we was all day moving and part of the day, and the next.

Q. Therefore, you were moving two days?

A. And we were looking for rooms.

Q. I know, but you were moving those two days, were you?

A. Yes, sir.

Q. And it took you two days, to carry those?

A. We did not have to hurry.

Q. I know you did not have to hurry, but it took you just two days to move?

A. Yes, sir.

Q. Now, Mrs. Stewart, you and Mr. Stewart were separated, were you not?

A. A short time, yes, sir.

Q. When was that?

A. Well, that was about, from about '28.

Q. '28 to what?

A. Well, these—we was separated about four years and a half.

Q. About four years and a half. And that was from about 1928 to 1932 or 1933, somewhere in there?

A. Yes, sir.

Q. Now, when was it that you were in Kentucky?

[fol. 280] A. In Kentucky?

Q. Yes.

A. I went there in, let's see, it was in April.

Q. April, 1937? A. Yes, sir.

Q. And when was it that you saw Mr. Stewart, that he told you what Mr. Renow said?

A. In October, I think it was in October.

Q. In October you saw Mr. Stewart then, and he told you what Mr. Renow said in October; and when was it that you got this telegram from Castleton, Illinois?

A. That was in November.

Q. November. May I see that telegram?

(Mr. Noell hands the telegram to Mr. Davis.)

Q. That telegram is from Mr. Haun, isn't it?

A. Yes, sir.

Q. And all Mr. Haun said was "Mr. Campbell suggests that you and Mrs. Stewart"—this is to Henry Hamm?

A. Yes, sir.

Q. "Mr. Campbell suggests that you and Mrs. Stewart be at my office 3:30 to 4:00 Thursday. Important."

A. Yes, sir.

Q. And that is all it said? A. That was enough.

Q. Well, he just suggested that you come?

A. Yes, sir.

[fol. 281] Q. Now, just repeat again what Mr. Hamm told you that Judge Howell said.

A. Well, when he went up there he wanted to know why he was called up there.

Q. Yes. He told you this, did he?

A. Yes, sir, that, naturally he would be uneasy or wonder why he was called, he did not know whether he had done anything or not, you know, and so he told him that, or he asked him, he was talking about this, about me being the widow, you know, I had lost my husband, and he said well, he did not know anything about that, and he said he was asking him to come up, that was the first he knew when he was asked to come up here, and he told him that he was advised, wanted him to kind of talk to him, advised him to go and see Mr. Campbell.

Q. Advised him to go and see Mr. Campbell?

A. Yes.

Q. And that is all he told you, was it?

A. No. He told him that he had been working there quite a while, and he thought it would be best for him to go and see him.

Q. It would be best for him to go and see Mr. Campbell? A. Yes.

Q. And that is all he said?

A. On account, he said, that they had wanted him to [fol. 282] settle that case.

Q. Who wanted him to settle it?

A. The company wanted Henry to see about me settling the case, and see if he could not talk me in—

Q. What company?

A. The Southern, he would like to see if he could not talk me into taking the stipulated amount.

Q. Mr. Hamm told you that?

A. Yes, sir.

Q. Now, you said a while ago that Judge Howell said he did not urge you to do it.

A. He told him he had known him a long time, and he thought that he should go see him.

Q. That he should go see him? A. Yes.

Q. But he could go or not as he wanted?

A. Yes, but he thought it would be best.

Q. He thought it would be best if he did go and see him?

A. Yes, sir.

Q. And that is all Mr. Hamm told you?

A. No. He told me that he might lose his job if he did not push the case, they wanted him to push the case.

Q. He did not say Judge Howell told him that, did he?

A. No.

Q. No.

A. But he was uneasy because he knew he would not have called him up there if he had not wanted him to do [fol. 283] that, because there was a card there from Mr. Hamm, that he should go see Mr. Campbell.

Q. But Judge Howell did not tell—Mr. Hamm did not tell you that Judge Howell said he would lose his job if he did not go?

A. No, but he said he had been working there a long time, he would advise him to go.

Q. He advised him to go and see Mr. Campbell?

A. Yes, sir.

Q. And to see whether or not a settlement could be made?

A. Yes. They wanted him to see if he could not influence me in taking—

Q. He said that Judge Howell, Mr. Hamm said Judge Howell said that—did Mr. Hamm just tell you that?

A. Mr. Hamm told me that.

Q. But he did not say that Judge Howell said that?

A. No, but he said that Mr. Howell said that he was, that he wanted him to go and see Mr. Campbell.

Q. Did he tell you that he called up Mr. Campbell while he was there?

A. No. He said he had, Mr. Howell was notified for him to call him over there and talk to him.

Q. And that is all that was said during that time that he told you that Judge Howell said?

A. Yes. You have Mr. Howell's statement.

[fol. 284] Mr. Davis: May I get a drink, Your Honor?

(A short pause.)

Q. Then, whatever Mr. Hamm said to you about it, it might mean his job, he was just surmising that?

A. No. He was worried about his job.

Q. But I say, it was not because Judge Howell told him that?

A. Well, he would not have been worried if he had not been called to the office.

Q. I know, but Judge Howell did not tell him he might lose his job, as he told you?

A. Well, he had been working there a long time.



Q. No. You are not answering my question. I say, Mr. Hamm did not tell you that Judge Howell said that he might lose his job?

A. (No response.)

Q. Well, you said he did not say that. Now, how old is Mr. Hamm?

A. About thirty, somewhere near thirty at the present.

Q. Now, the last time you saw Mr. Haun was about April 20th? A. Before that?

Q. Yes. A. Yes, sir.

Q. Before that, April 20th? A. Yes, sir.

Q. And then you did not see him again until November 30th? A. No.

[fol. 285] Q. And you saw him then in Mr. Campbell's or Mr. Wiechert's office? A. Mr. Wiechert's office.

Q. Who is Mr. Barrett?

A. Mr. Barrett, well, that is the man that runs, that sells hot tamales. He has a factory.

Q. He has a factory; what kin is he to you?

A. Well, he is no relation of mine, but he married a sister to my son-in-law.

Q. Now, did Mr. Hamm come and tell you anything about settling—I mean Mr. Barrett?

A. No, but he told his mother-in-law, and they were all very worried that Henry would lose his job.

Q. They were worried?

A. If he did not push the case.

Q. And why?

A. Because they knew he had a wife and children to support.

Q. They knew, didn't they, that Mr. Hamm had gotten a pass for you, hadn't he?

A. Well, he had got a pass, yes, because I was living with them at the time. He was entitled to that.

Q. I know he was entitled to it, but Mr. Barrett was worrying over the fact that he had got a pass for you, wasn't he?

A. Oh, I don't know what he was worried about, but his wife's family were worried because they were afraid his children would suffer if he lost his job.

[fol. 286] Q. Didn't his family tell you that Mr. Barrett said that Mr. Hamm might lose his job because you had gotten a pass?

A. I do not remember anything about that.

Q. Because Mr. Hamm got you a pass, that is true, isn't it?

A. I do not know if he worried about the pass, but I know the family were worried for fear he would lose his job.

Q. Mr. Barrett told you, didn't he, that Mr. Hamm might lose his job because he had gotten a pass for you, or his mother told you, or some of his family?

A. Mr. Barrett did not talk to me.

Q. Well, his mother came and talked to you?

A. His mother did not say anything about the pass.

Q. His mother did not say anything about the pass?

A. His mother-in-law did not, no. They were worried about him losing his job.

Q. Did that influence you in any way?

A. It worried me, if he would lose his job.

Q. What I say, what Mr. Barrett's mother told you, did that influence you in any way?

A. Why, naturally it would, if she was afraid that her son would lose his job, and his family would suffer.

Q. Well, you knew that he was worried because he had gotten a pass for you, didn't he?

[fol. 287] A. No, I do not know that that worried him. He was worried because they wanted him to push the case.

Q. Is Hamm still working for the Terminal Railroad?

A. He is.

Q. He works every day, doesn't he? A. He is.

Q. Did Mr. Barrett's mother tell you that the family was worrying about losing his job, and that—

Mr. Hay: What are you reading from?

Mr. Davis: I am reading from the testimony. (Continuing) and that he was worrying because—

Mr. Hay: Page 103?

Q. Because Henry got a pass for his mother-in-law, who has a suit against the Southern, and could he get into trouble doing that, that is, he asked a certain gentleman if he could get in trouble doing that, didn't he?

A. I don't remember that.

Q. You do not remember that? A. No.

Q. And that this gentleman said "No, sir, if his mother-in-law was living with him and relying on him for support he would not get into trouble", that was not told to you?

A. I do not remember that.

Q. You do not remember that. Now, did Mr. Hamm also tell you that at the time he was talking to you, that Judge Howell had told him that if Bruce Campbell said [fol. 288] that you would get this five thousand dollars net, that you would get it?

A. Yes, but I had not told them I wanted that.

Q. I know, but did he tell you that, didn't he?

A. Yes.

Q. Mr. Hamm told you that Judge Howell said if Bruce Campbell said you would get five thousand dollars net, you would get it, and if Mr. Noell had any attorney's fees, they would take care of it? A. Yes.

Q. He told you that?

A. He also told him I could pay him everything I got, it was nothing to him.

Q. You could pay Mr. Noell everything you got?

A. Yes.

Q. But he told you he would take care of any attorney's fees Mr. Noell might have, didn't he?

A. Yes, he did.

Q. Mr. Hamm told you that?

A. Well, I don't remember him telling me that. He may have told me.

Q. Well, who told you that?

A. Who told me that?

Q. Yes. A. Mr. Wiechert told me that.

Q. Mr. Wiechert told you that? A. Yes, sir.

Q. That they would take care of any attorney's fees that Mr. Noell might have? A. Yes, sir.

[fol. 289] Q. Now, when you went to Mr.—I believe they pronounce that Mr. Weechert's office?

A. Well, Weechert or Wiechert, any way you want to pronounce it.

Q. Yes. When you went over to his office, what time in the morning did you get there?

A. Well, I don't remember now. I judge about 10:00 o'clock.

Q. About 10:00 o'clock?

A. Half past nine, something like that.

Q. And when you got there they had all the papers prepared? A. Yes, sir.

Q. And did you have a discussion with him, talk with him? A. I answered his questions.

Q. Well, you answered his questions. And did he tell you that he was willing to pay you five thousand dollars?

A. He told me they had the amount ready for me. He showed me the papers.

Q. Did they tell you that Mr. Hamm told them at that time that when he left there, that you were willing to settle for five thousand dollars?

A. No. I had not made my mind to sign.

Q. You had not made your mind to sign? A. No.

Q. When did you make your mind?

A. When they told me that he could lose his job, and it had been done.

[fol. 290] Q. Told you he could lose his job, and that is all they said to you, was it?

A. He said it had been done.

Q. He could lose his job and it had been done?

A. Yes.

Q. Now, who said that to you? A. Mr. Wiechert.

Q. Mr. Wiechert? A. Yes, sir.

Q. Mr. Hamm did not tell you that Judge Howell said that, as you said?

A. No. Mr. Howell knew that he was running himself liable if he did not.

Q. Mr. Hamm and you both knew that under the Brotherhood rules that they could not discharge Mr. Hamm for anything of this nature, didn't you?

Mr. Hay: I object to any testimony about her knowledge of Brotherhood rules.

Mr. Davis: I am asking her.

The Court: She may answer.

The Witness: They can get demerits for enough months that they are so indebted they never get out.

Q. Has Mr. Hamm got any demerits?

A. So far he has not.

Q. So far he has not. And he has not had any in the last two years, has he?

A. He did not know at that time that he would not get [fol. 291] any. And you knew that they could not discharge him because he had seniority, didn't you?

A. I can tell you, he could get demerits for very many months that—

Q. And you knew.

Mr. Hay: Just a moment.

The Court: Let her finish her answer, Judge.

Mr. Davis: Yes.

Q. And you knew, didn't you, that he could take this up with the Railroad Labor Relations Board, didn't you?

A. He could, but that is not saying anything about the time he might be off during that time.

Q. Well, you knew if he was put off when he ought not to have been, that he could have gotten his back pay and reinstated, didn't you?

A. Well, that didn't keep us from worrying.

Q. That did not keep you from worrying. But you knew all that, didn't you?

A. At the time I never give it a thought.

Q. But you did know it?

A. I do not know if I did or not.

Q. You do not know whether you did or not?

The Court: Are you familiar with all the rules of the Brotherhood?

[fol. 292] A. No, sir, I have no need to keep that in mind.

By the Court:

Q. Have you ever read them?

A. No, sir, I had no occasion to read them. If I had been a railroad man I might have stayed up nights studying them.

Q. Now, you say Mr. Stewart laid off because he figured he would give some men a break? A. Yes, sir.

Q. Laid off for that reason alone?

A. Well, probably he had some business to transact.

Q. Well, if he had some business to transact then it was not to give the men a break?

A. Well, I could transact something, I presume, if he did not want to lay off to do it himself.



Q. Now, you have always been a normal person, haven't you, Mrs. Stewart?

A. I have never been to the asylum, or had anybody to watch me, or anything.

Q. I say, you have been a normal person?

A. Never been sickly, or anything.

Q. And you are a person of good intelligence, aren't you?

A. Well, I don't know. I have always been able to get around by myself.

Q. Always been able to transact your business?

[fol. 293] A. Yes, sir.

Q. Now, what else took place in Mr. Wiechert's office when you were there on November 30th?

A. What do you mean?

Q. What other conversation was had?

A. Well, I could not say.

Q. You could not say; the only thing that you remember about that conversation is that he said that he could lose his job, and it had been done? A. Yes, sir.

Q. And that is the only thing that was said.

Mr. Hay: Oh, she did not say anything of the kind.

Q. That you remember?

A. Oh, I would not exactly say that, no.

Q. Well, what else do you remember?

A. Well, we sat there quite a while waiting for Mr. Haun and for Mr. Felsen, and I could not tell you just what was said.

Q. Well, you got there, you say about 10:00 o'clock, and when did Mr. Haun come in?

A. We may have got there before that, half past nine, or something like that, I don't just remember.

Q. Well, how long before Mr. Haun came in after you got there? A. Oh, several minutes.

[fol. 294] Q. Several minutes. What do you mean by several minutes, two or three or four or five?

A. I did not keep track of the minutes.

Q. You did not keep track of them. Now, did Mr. Haun or Mr. Wiechert tell you that Mr. Hamm could lose his job, it had been done in the presence of Mr. Haun?

A. I don't just know if Mr. Haun was there or not, but Mr. Felsen was there, and my son-in-law and my daughter.

Q. Well, who got there first, Mr. Haun or Mr. Felsen?

A. Mr. Haun, but Mr. Haun left first.

Q. Now, after you got through with that, you did not sign any papers there?

A. I do not remember if I did or not.

Q. Well, didn't you go over to the Probate Court and swear to it before the Probate Court?

A. Yes, sir.

Q. And you got in an automobile from Mr. Wiechert's office and went over to the Probate Court, didn't you?

A. Yes, sir.

Q. And when you got to the Probate Court you read over all these papers, did you not?

A. There was one I don't remember reading.

Q. Well, do you remember—what do you remember was that?

A. That was the one about Mr. Noell, where it told [fol. 295] about he paying me, Mr. Noell—

Q. Paying Mr. who?

A. Well, you read the one concerning Mr. Noell on there. There was one paper that I don't remember.

Q. That was filed over there? A. Yes.

Q. There isn't any paper in there about Mr. Noell.

A. No?

The Court: We will take a short recess.

(Recess, ten minutes)

Q. Mrs. Stewart, do you live with Mr. Hamm?

A. I am there at the present time, yes, sir.

Q. How long have you been there?

A. This last time I was there, say two weeks, three weeks.

Q. Three weeks? A. Yes, sir.

Q. And did you see Mr. Hamm this morning?

A. No, sir.

Q. You did not. When did you see him?

A. Last night.

Q. You saw him last night. Now, you said after Mr. Wiechert said that Mr. Hamm could lose his job and it had been done, how did that conversation happen to come up?

A. Well, he insisted on me settling the case and taking the said amount because they had instructed him to, and I [fol. 296] knew that if he did not—

Q. Who instructed him to do that did he say?

A. Well, Mr. Campbell.

Q. Mr. Campbell instructed him to do that. Now, go ahead and tell how it happened.

A. That they would like for him to push the case and see if he could not persuade me to take the said amount of five thousand dollars, and he knew that if he did not, it might mean that he would lose his job.

Q. That Mr. Wiechert would lose his job?

A. No, Mr. Hamm.

Q. And if he did not settle the case it might mean that Mr. Hamm would lose his job? A. Yes, sir.

Q. Mr. Wiechert said that?

A. Mr. Hamm said that he might lose his job.

Q. When did Mr. Hamm tell you he might lose his job?

A. He told me that a number of times.

Q. You mean before you went to the office that morning? A. Yes, sir, and my daughter said—

Q. No, I am talking about Mr. Wiechert, how did that conversation with Mr. Wiechert happen to come up when Mr. Wiechert told you he could lose his job, it had been done, how did that conversation happen to come up?

[fol. 297] A. My daughter brought that up.

Q. Your daughter brought that up? A. Yes, sir.

Q. What did she say?

A. She said, "Now, would he lose his job if he did not push the case?"

Q. Now, who was there with you, went to the office with you at that time? A. Who went with me?

Q. Yes, sir. A. My son-in-law and my daughter.

Q. That is Mr. Hamm and Mrs. Hamm went there with you? A. Yes, sir.

Q. And your daughter brought that up, and said that, could Mr. Hamm lose his job? A. Yes, sir.

Q. And they said he could lose his job, it had been done?

A. He could lose his job, and it had been done, meaning other men had lost their job for that purpose.

Q. I am not asking you what it meant.

Mr. Davis: I ask that it be stricken out, Your Honor.

The Court: Sustained.

Mr. Hay: I think she should be entitled to state what it meant to her, Your Honor.

The Court: Overruled.

Mr. Davis: I did not catch Your Honor's ruling.

Mr. Sheppard: He sustained your motion.

[fol. 298] The Court: I sustained the motion.

Q. They did not say that Mr. Hamm would lose his job, was going to lose it, did he?

A. He said it could be done.

Q. It could be done? A. Yes, sir.

Q. Did Mrs. Hamm go down to Kramer, Campbell, Costello & Wiechert's office the day before to arrange for you being there, do you know?

A. They was called, they was called up there to help settle the case.

Q. I know.

A. That is why the papers were made out.

Q. Did Mrs. Hamm go there the day before?

A. Now, I could not say if she did or not.

Q. Now, as you stated, Mr. Hamm had this conversation with Judge Howell on November 23rd?

A. I do not just remember what day it was, but he had been called up there. I was not there.

Q. I know you were not there, that was on the 23rd. Now, you were away at that time, weren't you?

A. Yes, I was away.

Q. And do you know whether Mrs. Hamm, during the —between the 23rd and the 30th went up to Kramer, Campbell, Costello & Wiechert's office?

A. Well, Mr. Campbell and Mr. Hamm had talked the matter over.

[fol. 299] Q. Well, Mr. Campbell and—

A. And Mr. Hamm knew if he did not,—

Q. No.

A. That is what he told me, and that is how the papers come to be fixed up.

Q. Told you what, told you what?

A. That he was induced to get me to settle the case.

Q. That he was induced to get you to settle the case?

A. Yes, sir.

Q. That is what he told you, that he was induced to get you to settle the case? A. To try to settle the case.

Q. And that was the meaning of his talking to you, that they induced you, that they were trying to get him to induce you to settle the case?

A. That if he did not he would lose his job, that was the fear he had.

Q. That was the fear he had, but not from what anybody told him.

A. Well, if they had not talked to him in a manner to make him afraid he would not be afraid.

Q. I am not asking you that. So while he told you he did not say that anybody else had told him that, did he?

A. Well, he had that fear himself without anybody telling him.

Q. I know, he had that fear, but nobody told him that, [fol. 300] so far as he told you.

Mr. Davis: I think that is all.

Mr. Sheppard: She did not answer.

Mr. Davis: I know. She has already said that he did not, anyway.

Q. Your husband was, had been a railroad man since he was a young man, hadn't he? A. Yes, sir.

Q. And he talked to you about seniority rules, didn't he?

A. Sometimes, but I did not keep track of all the things he talked to me about. It did not concern me.

Q. But he did talk to you about them?

A. I presume he had.

Q. Wasn't he your husband; didn't it concern you to that extent?

A. If it had been his case, it would, but other cases did not bother me.

Q. Other cases did not bother you.

Mr. Davis: I think that is all.

Mr. Hay: Just two or three questions.

#### Redirect Examination.

By Mr. Hay:

Q. Mrs. Stewart, Mr. Hamm as has been indicated, is the husband of your daughter? A. Yes, sir.

[fol. 301] Q. How many children have they?



A. They have two.

Q. How old are they?

Mr. Davis: Well, that is objectionable, Your Honor is absolutely immaterial.

Mr. Hay: Well, I do not think it is, Your Honor.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. How old are they? A. Eight and ten.

Q. Mr. Davis asked you if you were a normal person. You have the normal attitude of a grandmother to grandchildren, have you? A. Yes, sir.

Mr. Davis: Well, we object to that, Your Honor.

The Court: You opened that up, I think, Judge.

Mr. Davis: I may have done so, but nevertheless—

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. And you have the normal—

Mr. Sheppard: May we add the further declaration that it is very leading?

[fol. 302] The Court: Sustained.

Mr. Hay: I will change the form.

Q. Would you say that you have or have not a normal person's concern for the welfare of your daughter and grandchildren? A. Yes, sir.

Q. You say you and Mr. Stewart for some four or and one-half years were not living together?

A. Yes, sir.

Q. How long had you lived together continuously immediately prior to his death? A. Twenty-four years.

Q. I mean, since your reconciliation, after this separation for four and one-half years.

A. Two years and a half.

Q. Two years and a half. Had you become completely reconciled to each other?

A. Why, sure. He had really been at home more and more attentive than he ever had.

Q. You had borne children by him, had you?

A. Four.

Q. Did you ever have any other husband?

A. No, sir. He nor I were never married before.

Q. And were you and he living happily together for two and one-half years before his death?

[fol. 303] A. In St. Louis and East St. Louis.

Q. He spoke of Mr. Hamm. Is Mr. Hamm still working for the Terminal Railroad Association? A. Yes, sir.

Q. And he has a brother working there, too?

A. Yes, sir.

Q. He is still anxious to hold his job, is he?

A. Yes, sir.

Mr. Davis: Well, we object to that, Your Honor.

The Court: Sustained.

Q. Mrs. Stewart, I believe you testified when you were on the stand the other day that you arrived at the hospital about 6:30 or 7:00 o'clock, or just when was it?

A. It was 6:30 or 7:00, something like that.

Q. 6:30 or 7:00 o'clock? A. Yes, sir.

Q. He had been injured, the record I believe shows here, about 5:40 or twenty minutes of 6:00? A. Yes, sir.

Q. And you got over to the hospital, and how long did you stay there? A. Why, I judge about 10:00 o'clock.

Q. Until 10:00 o'clock.

A. They insisted on my leaving so he could get rest.

[fol. 304] Q. Was he conscious during all that time?

A. Yes, sir. He told me all about how it happened, and when they brought him to the hospital.

Q. I see. Were you there during the next day?

A. Yes, sir.

Q. And how much of the time were you there the next day, that would be the 13th?

A. Well, we came right about noon, or along in the afternoon, because they told us they did not want us to come in the morning, they might operate on him, and they wanted him to be rested.

Q. And were you there after he was operated on, the next afternoon? A. Yes, sir.

Q. How long were you there?

A. Well, as I say, I got there along in the early part of the afternoon, and I stayed until, well, I judge it was about 2:30 o'clock the following morning.

Q. You were there constantly all that time?

A. Yes, sir.

Q. Were you in the room during that time?

A. Not all the time, because they insisted I go out so they could put his dressing on his arm, it had been bleeding so.

Q. I believe the record shows that in that short space of time, five different times the bandages were changed on [fol. 305] account of the bleeding. A. Yes, sir.

Mr. Davis: Now, wait a second. Do you know that, Mrs. Stewart?

A. Yes, sir.

Mr. Davis: Did you see it?

A. Yes, sir.

Mr. Davis: All right.

Q. You were there, or were you there the day that he died? A. Yes, sir.

Q. What time did you get there before on that day?

A. We was there most of the day.

Q. When was the doctor there?

A. I don't think I seen the doctor right until the latter part, just before he passed.

Q. I see. Now, during all the time that you were there, I think you testified about his suffering pain, I won't ask you that. Did your husband talk to you during the time that you were there from time to time?

A. At intervals he did, when the pain was not so severe, he tried to talk, yes, sir.

Q. At any time that you were there did you hear him say anything about seeing snakes, or bugs, or rats, or any thing of that sort?

[fol. 306] A. No, sir. He only complained of his suffering, and how that I would get along if he was not able to

work, and he said he could not dress himself or feed himself or tie his shoes.

Q. There was entered on this record that your husband died of delirium tremens.

A. Well, that is not the fact.

Mr. Davis: We object to that, Your Honor.

The Court: Sustained.

Q. When was the first that you heard anybody say anything about delirium tremens?

Mr. Sheppard: We object to that, Your Honor. It does not make any difference when she first heard of it.

Mr. Hay: All right.

The Court: Sustained.

Mr. Hay: All right. That is all.

#### Recross Examination.

By Mr. Davis:

Q. Mr. Wiechert, Mr. Haun, or Mr. Felsen did not threaten you in any way, did they?

A. In what way threaten me?

Q. Well, they did not threaten to hit you?

A. Well, they better not.

Q. No. I think they had not. And they did not threaten [fol. 307] to keep you there? A. No, sir.

Q. And you could have got up and left at any time you wanted to? A. No, I don't think I could.

Q. You mean that you could not have got out of their office at any time you wanted to?

A. Oh, I guess I could have got out.

Q. And then they told you that they wanted to go over to Belleville, didn't they?

A. Yes, sir.

Q. Take you over there. And you went out and got in Mr. Wiechert's machine, didn't you, to Belleville?

A. Well, I have been talked to by so many people whom they had sent to talk to me, that I was so confused that I did not know really what I should do, and I thought that was the only thing to do.

Q. And you were confused by what Mr. Barrett's mother told you and by what other people told you?

A. Yes, for fear her son would lose his job.

Q. You were confused about those things?

A. The pass was never brought up until now, that I know anything about.

Q. But you got in the machine and went over to Belleville in Mr. Wiechert's machine, didn't you?

[fol. 308] A. I did, yes, sir.

Q. And you found the Probate Clerk's office, didn't you?

A. Found it closed.

Q. Yes. The Judge was not there?

A. I don't remember about that. I was so confused.

Q. You were so confused. But you did not have to get in that machine and go, did you?

Mr. Hay: Oh, it is just [arguring] with the witness, Your Honor.

The Court: Well, it is cross-examination.

Mr. Davis: Yes.

Q. You did not have to get in that machine and go, did you?

A. No, I was never forced no place in my life.

Q. You were never forced any place, and Mr. Hamm and Mrs. Hamm went with you over there? A. Yes, sir.

Q. And they went out and got in the machine with you?

A. To their own interest, yes, sir.

Q. And then you got over there and you went to lunch at Elk's Club, did you not?

A. Well, the rest were going and I went, I did not want to be contrary.

Q. You did eat some lunch, did you?

A. I ate some, but I ain't saying that I enjoyed it.

[fol. 309] Q. Then you left, after you left the Elk's Club or wherever it was you got lunch, you went over to the Probate Court?

A. Yes, sir.

Q. And you talked to the Judge, did you?

A. I answered his questions.

Q. You answered his questions. Well, you talked to him, didn't you?

A. I had no real conversation with him. I just answered his questions.



Q. And then after you answered his questions you signed a petition to authorize you to settle this case, did you not?

A. Yes, sir.

Q. And is that your signature to that petition (showing a paper to the witness)?

Mr. Hay: Oh, I object, to that. That has been gone over and identified.

A. I have told you that several times.

The Court: Very well, but it is cross-examination.

Q. Now, Mrs. Stewart, you said there was one thing that you did not see? A. Yes, sir.

Q. And what was that?

A. One paper, I don't remember them reading to me, but I don't remember reading—

Q. But you did read the papers, didn't you?

[fol. 310] A. Yes, sir, I could not say if I read that paper.

Q. You signed this paper?

A. I may, but I was so confused, being harrassed and—

Q. You signed it?

A. That is my signature, yes, sir.

Q. That is your signature. And that is the paper that you said that there was something in it you did not see, the very one you signed, isn't it?

A. Yes, sir.

Q. And besides signing this paper you swore to it before the Clerk of the Probate Court, didn't you?

A. Yes, sir.

Q. And you did not protest to them about signing it at that time, did you?

A. No, sir. I just told them that I was not satisfied.

Q. Told who? A. At the court.

Q. Told who at the court?

A. The parties that were there.

Q. Well, who were they, do you mean you told the Probate Judge? A. Yes, sir.

Q. You told the Probate Judge you were not satisfied with it. Did you tell the Probate Clerk?

A. Why, I don't remember whether there was a clerk or not, but I—

Q. Yet, in view of the fact that you were not satisfied [fol. 311] with it, you went on and signed it?

A. Yes, sir.

Q. And after that you took the check? A. Yes, sir.

Q. And you went down and signed a release after that?

A. Yes, sir.

Q. And then you went and took the check to the bank and put the check in the bank, didn't you?

A. After I rescinded it, yes, sir.

Q. After what?

A. After I took the money to you.

Q. Now, after you first got that check you took it over and deposited it in the bank, didn't you?

A. Yes, sir.

Q. And who was with you when you deposited it in the bank? A. Mr. Felsen.

Q. Was Mr. Wiechert or Mr. Haun with you when you deposited it in the bank?

A. My son-in-law and his wife.

Q. They were with you? A. Yes, sir.

Q. But Mr. Haun and Mr. Wiechert were not with you when you put it in the bank?

A. I do not think Mr. Haun was there, and I do not remember now if Mr. Wiechert was there or not. He might have been. I could not say.

Q. But you do not think Mr. Haun was there?

[fol. 312] A. But I know Mr. Felsen was there.

Q. That is when Mr. Felsen got \$150, wasn't it?

A. Yes, sir.

Q. And he went over there? A. Yes, sir.

Q. And your son-in-law and your daughter, Mrs. Hamm, went to the bank with you and saw you deposit it?

A. Yes, sir.

Q. And Mr. Felsen? A. Yes, sir.

Mr. Davis: I think that is all.

#### Redirect Examination.

By Mr. Hay:

Q. This Mr. Felsen, that is the man who purported to be representing you, isn't it? A. Yes, sir.

Mr. Davis: Well, we object to that question, Your Honor. That is a leading question.

Mr. Hay: I think it is entirely warranted by the facts in this case, Your Honor.

Mr. Davis: I think it is leading.

The Court: I will sustain the objection to the form of the question.

Q. Did you hire this man Felsen? A. No, sir.

Q. Did you tell anybody you wanted Felsen?

[fol. 313] A. No, sir.

Q. How did he happen to get into this case?

A. Well, they named several, they wanted to know what attorney I would like to have, they would have to have some attorney to finish up the business, the transactions, and they named several, and they asked me which one I wanted, and I told them they were all the same to me, I did not know any of them.

Q. And who brought Felsen in?

A. Mr. Wiechert, I presume.

Q. I see; and in the conversations that you had when Felsen was present, you were all right there in the offices of the Southern Railroad Company?

A. Yes, sir.

Q. Did you pay Felsen any part of what came to you in this matter?

A. No, sir.

Q. He was paid by the Southern Railroad Company?

A. The check was made to him.

Q. Did you at any time ever indicate that you wanted Felsen to come in and advise you what you should do?

A. No, sir.

Mr. Hay: That is all.

#### Recross Examination.

By Mr. Davis:

Q. That check was made out to both you and Mr. Felsen, wasn't it?

A. One check was to Mr. Felsen.

Q. Oh, was it?

A. He did not want to take it home because he said they should keep it down there for him that night.

Q. Isn't that for \$5,150, and Mr. Felsen's name is on there?

A. Well, his name is on there, of course. If it had not been for me his name should not have been on there.

Q. That check is for \$5,150, isn't it?

A. Yes, sir.

Q. And Mr. Felsen got \$150, and you got five thousand dollars?

A. Yes, sir.

Q. So they did not give Mr. Felsen any check except this check?

A. Well, his name is on it. It is the same as if he had had two checks, I presume.

Q. The same as if he had two checks.

Mr. Davis: I think that is all.

Mr. Hay: That is all.

(Witness excused.)

DOCTOR JOHN H. SIMON, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the plaintiff, in rebuttal, as follows:

#### Direct Examination.

By Mr. Hay:

Q. Doctor, state your name to the jury, please.

[fol. 315] A. My name is John H. Simon.

Q. You live here in the City of St. Louis?

A. Yes, sir.

Q. How long have you lived here, Doctor?

A. I have lived here all my life, about seventy years.

Q. What is your business or profession?

A. I am a physician.

Q. In the course of your practice, Doctor, or studies, have you made a specialty of any field?

A. I have made a specialty of mental and nervous diseases, given it more attention than any other branch, although I have not practiced it exclusively. I lectured the students for about ten years at the Missouri Medical College, in the Clinics, and gave it further special study when I was Health Commissioner at the institutions of St. Louis, particularly the insane asylum.

Q. How long did you have that connection, Doctor?

A. About two or three years in the institutions.

Q. And in the course of your practice and study, have you had occasion to observe and to treat persons with various forms of mental and nervous diseases?

A. Yes, sir.

Q. Have you had opportunity in the course of your practice to treat and study the persons with what are called [fol. 316] delirium tremens?

A. Yes, sir. I have seen a great many delirium tremens cases.

Q. And could you approximate how many you have seen?

A. No, I would not like to do that. I done that once or twice and regretted it, but I have seen a great many, and I have been practicing forty-nine years now, ten years of that time was devoted almost exclusively to nervous diseases, and during the rest of the time, and in general practice I saw a great many of those cases.

I think the general practitioner in fact sees more delirium tremens cases than the specialist, because the family doctor is always called in on those cases.

Q. Doctor, what are the characteristics of delirium tremens?

A. The characteristics, the outstanding characteristics of delirium tremens are, as the word itself implies, delirium and trembling, delirium tremens, means trembling delirium.

One of the outstanding, the most outstanding feature perhaps of all is the constant trembling tremors when the patient is so afflicted.

The other one is a terrible fear which is in common parlance the other name, delirium tremens, which is the horror. [fol. 317] rors.

The next outstanding feature is horror, any terrible, terrible horror or fear.

Then the other outstanding characteristic and one which I consider absolutely essential to the diagnosis of delirium tremens, is the presence of certain visual hallucinations. The big word means that you see things which are not there, and particularly creeping crawling things, snakes,



mice, lizards and animals which do not exist at all in the world, which only exist in the imagination of the patient, and which have given the other name to this disease, which is the snakes, also called the whisky fits. There are a number of names attached to this disease, all of which include the symptoms of horror, fear, trembling and hallucinations.

Q. Now, Doctor, at my request, did you examine in detail the hospital record of the deceased in this case?

A. Yes, sir.

Q. Mr. John R. Stewart?

A. I looked the record over. I do not know whether I am going to be able to see it here. My eyes have gone back on me terribly in the last couple of weeks in spite of new glasses and everything.

Q. Will that light help you any? A. Yes.

[fol. 318] Q. I want to call your attention to certain entries in this record which has been marked Plaintiff's Exhibit "E", and first, particularly to the record of the entrance examination of the deceased. It is under date of February 12, 1937, lacerated right forearm, patient is a railroad man. Accident by having his arm caught between—

Mr. Sheppard: Your Honor, we object to that. That is the history given, and it is hearsay and incompetent in this case.

(The said document was marked for identification by the reporter as Plaintiff's Exhibit "E".)

Mr. Davis: It is self-serving.

Mr. Sheppard: It is purely self-serving.

Mr. Hay: I do not suppose there is anybody here questions he had his arm caught.

Mr. Sheppard: Well, the history given is certainly not admissible, because that is one hundred per cent violation of the hearsay rule.

The Court: Sustained.

(The said document heretofore identified as Plaintiff's Exhibit "E" consists of ten sheets, four of which contain writing on both front and back, and photostatic copies of which, comprising thirteen sheets, are here inserted.)



PLAINTIFF'S EXHIBIT E.

ST. MARY'S HOSPITAL  
EAST ST. LOUIS, ILL.

SUMMARY SHEET

Date of Admission 2-12-37

Reg. No. 27-0580

Name Mr. John Stewart

Room No. 143

Address 312 No. 16 St.

Occupation Switchman

Age 61 Sex Male

Race W M.H.

Nationality Am.

Religion

Service Army

Attending Physician G. B. McQuillen M.D.

Admission Diagnosis Injured Arm

Date

Previous Hospital Admissions

Diagnosis

FINAL DIAGNOSIS  
including complications

Main Arterial thrombosis, cardiac, from embolism

Secondary Shock, traumatic asphyxia from forearm

Operation: Disarticulation forearm elbow

Underline  
Result:-

Recovered

Improved

Unimproved

Not treated

Died ☒

Autopsy

Consultations None

Infection Institutional

Remarkable Features

Date of Discharge Expired 2-14-37

Signature of Attending Physician

Record Committee: Date 2/16/37

ST. MARY'S HOSPITAL  
CITY OF LOUIS, LA.

## Emergency Room Record

Date 2.12.1917

Ambulance *Kusma* Record No. Room No. 143

Admitted Hour A. M. 6:30 P. M. Discharged, Date

Name *John A. Stewart*Address *312 N. 16.*Age 61 Race 24 Nationality *Amer* A. M. W. Religion *Baptist*Occupation *Switchman* ForemanWhere Employed *Southwestern R.R.*

Address

Injured By Whom *Self while @ work*

Address

Attending Physician *Dr. A. B. McQuillin* Reg. No.Interns *Dr. Brennan & Kadlubekian* C. Phillips

Anesthetist What Given

## History Obtained on Admission:

Pt. had his rt. hand caught between  
2 cars - while working.

Examination - Severe crushing injury  
to middle 1/3 of rt. forearm.

## Treatment Given:

Forearm amputated  
Bonnaged  
Treated for Shock  
To Bed

Signed Doctor

*McQuillin*



Name John Stewart

Date 2-12-37

Room 143

P.E.

Traumatized Rt. forearm.

O.V.E.

Pt. is a railroad man. Accidentally had his arm caught between two railroad cars and his rt. forearm was crushed. Brought to hospital immediately for treatment.

Physical

reveals a well nourished and developing white male about 61 years of age who has his rt. forearm amputated in upper 1/3.

Temp - 98

Pulse 60

Temp. 16.80  $\frac{140}{76}$ 

Head

Scalp - Grossly Normal

Eyes - Pupils are round and equal  
React to light and accommodation.

No scleral or conjunctival hemorrhages.

Ears - Grossly Normal.

Neck - No rigidity

No tenderness

No lymphadenopathy.

Chest - Symmetrical

Lungs - Tacitus normal

Respirations good



Breath sounds clear.

Heart

Rate 60 Rhythm regular.

No thrills

Borders within normal limits on percussion

Lungs clear - No murmurs

Abdomen

Liver - Spleen - Kidneys not palpable

No rigidity - No tenderness - Distension

No masses - No herniations -

Extremities

Rt. forearm amputated in upper  $\frac{1}{3}$

Other extremities grossly normal.

History 1. Amputation (traumatic) of Rt. forearm in upper  $\frac{1}{3}$ .

E. J. Kalluburiski

Discharge Date:

Admitted to hospital 2-12-37. History of injury to Rt. forearm. Arm amputated in E.R. and pt. put to bed and treated for shock.

Next day pt. taken to O.R. and disarticulation at elbow joint done. Pt. went into D.T. just quickly and continued to be in comatose state after. Gradually more

and

E. J. Kalluburiski  
M.D.

## EXAMINATION OF URINE

Kind of Specimen **single**  
 Color **light amber**  
 Renal Function Test—1st hour  
 Method: Intramuscular  
 Sediment  
 2nd hour  
 Intravenous  
 Specific Gravity **1030**  
 Reaction **acid**  
 Total %

## CHEMICAL

Albumen **negative**  
 Sugar **10 gts.**  
 Acetone **negative**  
 Diacetic Acid **negative**  
 Occult Blood  
 (intravenous)  
 Indican

## MICROSCOPICAL

Stained Specimen

CASTS—Granular

Cylindroids

CELLS—Squamous Epithelial **few R.R.C.**

W.B.C.

CRYSTALS—Amorphous urates

Uric acid

Triple phos.

Ca. Oxalate

## EXAMINATION OF BLOOD

Date **6:45 P.M.**  
 Erythrocytes per c. m. m. **4,800,000**  
 Leucocytes per c. m. m. **12,000**  
 Haemoglobin **90%**  
 Color Index  
 Blood Clotting Time

## Shilling's Count

Pre-Mylec.	Mylec.	Neophiles	Eosinoph.	Stab Cells	Seg. Cells	Lymphoc.	Monocytes
				<b>8%</b>	<b>75%</b>	<b>14%</b>	<b>3%</b>

Plumodum Malaria

Wasserman Reaction

Examined by  
**Sister Salvatora**

ST. MARY'S HOSPITAL  
 EAST ST. LOUIS, ILL.

TO WHOM IT MAY CONCERN:

An attorney came to the desk and inquired to see the records of Mr. John Stewart. I told him to go to Dr. A. B. McMillan's office and get his permission to see them. He then asked to talk to Doctor. I connected him, when he finished speaking he said Doctor wants to talk to you, when I answered the call, Dr. McMillan said that it will be alright for the gentleman to see the chart.

*Sister M. Evelyn*



St. Mary's Hospital, East St. Louis, Ill.

## OPERATING ROOM RECORD

Reg. No. 37- Date 2/13/37  
 Patient's Name Stewart John Room 143  
 Surgeon Dr. A.B. Miller Assisted by Dr. \_\_\_\_\_  
 Anesthetist Dr. J. Kerthy Intern Dr. McMann & Haggard  
 Supervisor of operating room S.M. Antonella R.N.  
 Pre-operative diagnosis Re-arrangement of right arm  
 Condition of patient previous to opr. Fair  
 Anesthesia Started 3<sup>40</sup> pm. opr. 3<sup>50</sup> pm. Pulse before opr. 124  
 Stopped \_\_\_\_\_ Pulse after opr. 100  
 Anesthetic used, condition of patient during same Fair

The kind of incision, exploratory finding's, what was done, tissues or organs removed or repaired.

Disarticulation of forearm & elbow & right forearm

Ligature, sutures, drain and packing used.

Catgut

Sponge reports

Immediate post-operative condition of patient

Fair

Post-operative diagnosis complete

Surgeon's Signature

A.B. Miller

ST. MARY'S HOSPITAL  
EAST ST. LOUIS, ILL.

Date 2/14/29

Case No. \_\_\_\_\_

Room No. 143

PHYSICIAN'S ORDER

NAME Stewart, John

ADDRESS 312 N. 16th St.

DOCTOR G. H. McQuillen

Date Begin	Date Discont.	
4/14/29		1. Percechylde 3/4 Per. rectum & retention.
		2. Aps morphine gr 1/10 } hypodermically. Ilydylm Sulfur gr 1/20 } stat.
		3. Spt Discontinuation 4 times a day
2-14		4. Spt Discontinuation 4 times a day
		5. Spt Discontinuation 4 times a day
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INTERNE DR.

ATTENDING PHYSICIAN

G. H. McQuillen  
1404



Addendum.

ST. MARY'S HOSPITAL  
EAST ST. LOUIS, ILL.

Date 2/12/37

Case No.

Room No. 143

PHYSICIAN'S ORDER

NAME John Stewart ADDRESS 312 North 16<sup>th</sup> Street

DOCTOR R. B. McQuillan

Date Began Date Discont.

2/12/37

- ✓ 1. Medial tetraxins & gas bacillus anti toxin at once.
- ✓ 2. 500 cc. 10% glucose Intravenously at once.
3. Watch closely for bleeding.
- ✓ 4. Morphine Sulphate gr 1/4 hypodermically as needed.
- ✓ 5. E. brace foot of bed 6"
- ✓ 6. E. sexual heat.
- ✓ 7. Force fluids as much as possible per os.
- ✓ 8. Catheterize if does not void before 12 P.M.
- ✓ 9. Blood count & urinalysis.
- ✓ 10. Hot black coffee at once and repeat if desired.
- ✓ 11. Keep tourniquet on arm loose for emergency.

Addendum 12. Keep arm on pillow

2/13 Will amputate arm 3:30. No dressings.  
May smoke pipe.

2/13/37

- ✓ 500 c.c. 10% glucose intravenously
- ✓ 1000 c.c. normal saline hypodermoclysis
- ✓ 2% novocain in solution
- ✓ Two tablespoonsful whisky T. I. & C.
- ✓ Catheterize if 6 hrs. if necessary.
- ✓ Colon tube to rectum if necessary.

Dr. McQuillan for J. C. Coffey





BOSIDE NOTES

Name John Stewart Reg. No. 127 Room 147  
Physician Dr. B. McQuillen Day Nurse J. M. St. Daniel  
Supervisor Dr. M. J. Kelly, R.D. Night Nurse J. J. Gault (Dr. Crumblin R.D.)

Date	Hour		Medication	Diet	Remarks	Urine	Defecation
	A.M.	P.M.					
2/12/17	4 <sup>15</sup>	6 <sup>15</sup>			Admitted per straphole from Emergency room. Injury to left arm. Ox Acetaminophen - Complaining of severe pain in arm. slight state of shock Bed elevated 6" Dr. McQuillen visited Hot water bottle applied Hot H <sub>2</sub> O bottles to back and thighs Extra heavy blankets applied - Internal heat applied Dr. Crumblin R.D. on duty. 8 <sup>00</sup> Fluids 9 <sup>15</sup> Dr. Brinen changed dressings. large amount bright red blood. Dry dressings applied. 10 <sup>30</sup> Ox Pt. very restless complaining of severe pain and worrying about his condition. Pt. very talkative 3 <sup>30</sup> 2.0. 2/13/17 1 <sup>00</sup> Ox Pt. very restless complaining of pain in left arm. Twisting of body and talking in sleep. 5 <sup>30</sup> General a.m. care given. 175 2.0. Mineral Oil to lips from Dr. Hoffenberg changed dressing - much amt of bright red blood. Dry dressings applied. Condition of patient fair. Pulse rapid but good vol Pt. slept at very short intervals. 6 <sup>00</sup>		



Name Stewart, John Reg. No. 143  
Physician Dr. A. B. McWilliam Day Name J. Kruger at Dr. Daniel  
Supervisor Dr. M. Fabiola R.N. Night Name D. Brumbliss R.N.

Date	Hour		Medication	Diet	Remarks	Urine	Defecation
	A. M.	P. M.					
	7-			Hot Coffee	Enjoyed		
	7:30			Orange-ade	Slightly worried and very restless - very talkative		
	8-				Bandage becoming saturated with bright red blood.		
	8-				Touring gun applied for short length of time		
	9-				Sleeping lightly		
	10-				Dr. McWilliam visited		
		11:00			Complaining of general pain upper abdomen.		
		11:30			To Surgery		
		12:30			From Surgery		
		1:45			Pulse rapid with good vol.		
					Pulse 98 - Respirations		
					Refused diaphanous		
		7			Unaided 2000		
		9:30			Resting comfortably		
					Restless - Complaining of pain	100	
		11:00			awake - doses at very short intervals very talkative and worrying about his condition.		
12/14/27	12:00				becoming very restless.		
	1:00				talking irrational wanting to get up in small amounts at a time.		
	2:00				complaining of being cold.		
					Hot 1/2 bottles to body and external heat applied.		
					continues talking irrational trying to get out of bed.		
					refused diaphanous line changed from		
					faller of face		

Stewart, John

**THE**



Dr. A. A. Gillen

1940-1941

Sr. M. Fabiola R.H.

RECEIVED  
JAN 10 1968

Date	Hour		Medication	Diet	Remarks	Vitals	Defecation
	A.M.	P.M.					
					slight cyanosis of lips & finger nails.		
					pulse 140; of good volume.		
					Dr. Brennan visited.		
					Allyps given.		
					Heavocallat - but did not vomit.		
					No lips.		
					given all relaxation anesthetic.		
					Sponge bath of alcohol given.		
					Bandage becoming saturated with bright red blood.		
					sleeping soundly.		
					continues to sleep - reacted well after last administration.		
					Restraints applied.		
					very restless.		
					Treatment.		
					may 1 hour on duty.		
					xx very noisy & restless.		
					more quiet.		
					Restless.		
					Bandage saturated with dark blood (pink).		
					no more blood.		
					no hair.		
					Dr. W. Quillen here.		
					more quiet but appears to have pain.		
					Long sponge bath, the patient.		
					Position to the side.		
					Alcohol sponge.		
					Respirating freely.		
					Dr. W. Quillen called per phone.		
					into patient's condition.		



ST. MARY'S HOSPITAL  
EAST ST. LOUIS, ILL.

BEDSIDE NOTES

PLAINTIFF'S EXHIBIT E

Name \_\_\_\_\_

Room \_\_\_\_\_

Physician \_\_\_\_\_

Supervisor \_\_\_\_\_

Night Nurse \_\_\_\_\_

Date	Hour		Medication	Diet	Remarks	Urine	Defecation
	A. M.	P. M.					
2-14-57		5 <sup>00</sup>			Pneumothorax		
		6 <sup>00</sup>			Pulse too weak to count.		
					Pt. appears unconscious.		
					Dr. McQuillan was called		
					per telephone by Dr. Kadlinski.		
		7 <sup>00</sup>			Response from Coramine		
					given gradually growing		
					weaker.		
					Blood Pressure Unobtainable.		
					No radial pulse perceptible.		
		8 <sup>00</sup>			Dr. McQuillan called.		
		9 <sup>20</sup>			Expired.		





[fol. 332] Q. Physique, reveals a well nourished and developed white male about sixty-one years of age, who has his right forearm amputated in upper one-third. Temperature ninety-eight. Pulse sixty. Respiration 60 bps count, bps I suppose that is blood pressure 140 over 75. [fol. 333] Head scalp grossly normal.

What does the term grossly normal, what does that signify?

A. Grossly normal means that it is normal on the gross or superficial examination without going into microscopic or detailed examination.

Q. Eyes, pupils are round and clear, react to light and accom. I suppose that is accommodation.

A. Accommodation.

Q. No sclerol.

A. Sclerol, that refers to the white of the eye.

Q. Sclerol are conjunctival hemorrhages.

A. It means his eyes were not red, his eyes were normal, the white of his eyes looked normal like yours or mine. Maybe I can just—

Q. Ent grossly normal. What does that mean?

Q. What does this "ent" mean, grossly normal? I do not know that it signifies anything.

A. I do not know. It is all scratched up. You do not even know that that is an "e".

Q. Neck. No rigidity, no tenderness, no adenopathy.

A. Adenopathy, no glands involved.

Q. Chest. Symmetrical, lungs, fremitus, nominal fremitus.

A. Fremitus, yes, normal.

[fol. 334] Q. Fremitus normal and resonance good. Breath, or breathing, I suppose, breathing sounds, clear.

A. Yes.

Q. Heart rate sixty. Rhythmic regular, no thrills. Breast tone clear, no murmur. Abdomen, liver, spleen, kidney, are not palpable. No rigidity, no tenderness, distention, no mass, no hematoma.

A. Hematoma means blood tumor.

Mr. Davis: That really means a bump, doesn't it, Doctor?

A. No. It does not. It means a bump of blood, if you have a bump without blood in it that is not a hematoma. A hematoma is a bump raised, filled with blood.

Q. Extremities. Right forearm amputated at upper one-third. Otherwise, extremities grossly normal. Amputation, traumatic of right forearm in upper one-third.

A. Yes.

Q. Now, that was the entry made at the time of the entrance examination? A. Yes, sir.

Q. What would you say, Doctor, if you have—first, I will ask you, can you from this record, form an opinion as to the base of the general condition of the patient apart from his having the arm crushed off?

[fol. 335] A. I read that before, of course, and studied it, and I do not find one single thing in there which shows anything abnormal about the patient.

My ideas from that, based entirely on that because I did not know this individual, would be that that individual was a perfectly healthy person in all respects, from that record.

Q. Now, Doctor, what is the significance of the fact that his eyes were round and clear without any discoloration in the whites of the eyes, particularly as that might have reference to the habits of the man, the drinking habit particularly I refer to?

A. Well, when it says there the scleror were white and normal, that would mean in common English that you are looking into an individual's eye, man or woman, and find it perfectly normal, that the white of the eye is clear, meaning it is not smoggy, and looking yellow, it is not injected with blood, it is not bloodshot, in other words, and not such an eye as you would expect to find in a man who had been drinking.

I think every doctor knows, and every layman nearly, that a man who has been on a drunk will show it in his eyes for several days after.

This means the eye was perfectly clear, nothing to be [fol. 336] seen there abnormal.

Q. Now, Doctor, did you go through the details of the history of this patient as recorded by the nurses?

A. Yes, sir.

Q. Beginning at 6:45 on the 12th, and extending to the time of his death on the 14th?

A. Well, let me see.

Q. Now, I will ask you if there are any things in particular that attracted your attention about that history as having a significant bearing perhaps upon the final outcome?

A. Yes, sir. There were several things striking in this history. One of them was, this man was suffering terrible pain. The nurses' record there, here and there, now and then, again and again and again, there is notation that he is complaining of terrible pain, that is one thing that stands out. Another thing that stands out is the fact that he received a great many injections of narcotics.

Now, I would like to make it very distinctly understood that I am not criticizing in any way the physicians who treated this case. I was not there in person, and I do not know but what all these hypodermics were necessary to relieve pain. They probably were. I am simply stating now the facts as they appeal to me, a medical man, on this paper, [fol. 337] whether they were right or wrong I make no conjectures.

I think the doctors did the very best they could, and I think, so far as I can see, the treatment was in the main what any other doctor would do under the circumstances, but nevertheless this is one of the facts that stands out here, that again and again this man was given narcotics and hypnotics.

Now, narcotic covers that class of drugs which are opiates, all derivatives of opium, like morphine, codeine, and heroin and all those things.

The hypnotics are only sleep producers but not narcotics.

He received here several times by rectum paraldehyde. Paraldehyde is a drug which is given to quiet the nervous system, given in quite large doses, four ounces I believe, into the rectum. I did not count how many times, but at frequent intervals he received a quarter grain, one-fourth grain of morphine injection hypodermically.

He also received on one or two occasions here that I can't see now, some barbiturates, salts of barbituric acid, which are again another one of the hypnotics, not narcotics.

Then there is outstanding in this case the fact that the man was given small doses of whiskey. I did not see—I do not believe, I am quite sure that I did not see anywhere [fol. 338] here where he took any nourishment during the time that he was in the hospital. It is possible he took a little milk once or twice.

Q. Coffee, I think once.

A. Coffee I did not call nourishment. Coffee is a stimulant, and I just do not remember, but I know that if he got any he got almost no nourishment in the time he was in the hospital.

Again, I want to say, I do not criticize the doctors or nurses, because possibly they could not get him to take any, but I am stating simply the fact that he did not get any, so as in the conclusion here, give my reasons why I think this man had so and thus and not something else.

The Court: He got several drinks of whiskey from time to time, Doctor. Is there no nourishment in that, Doctor?

A. There is some nourishment in alcohol, but not in the quantities in which these were given.

Now, I, of course, belong to the allopathic school of medicine and not homeopathic, and I do not believe you can kill an elephant, say, with birdshot, or that sort of thing; but if I were giving a man in this condition whiskey I would give him a real drink of whiskey, or I would let it alone, because as everyone knows, small doses of whiskey simply [fol. 339] excite you and stimulate you, and larger doses put you down. Almost every lay person knows that a little whiskey stimulates your mind, gives greater flow of blood to the brain, makes you think faster, makes you talk faster, gets you all excited, whereas if you have two or three big ones you go down and go to sleep.

Now, he did give these small doses of whiskey. Maybe the gentleman who gave that has in their experience found that that was good. I, in my experience, have found that that was no good.

In addition then to the narcotics and the whiskey and the absence of food, there stands out another thing. There stands out the fact again and again, when the nurses went



to take the bandages off of this man they were saturated with blood and they were saturated with bright, crimson blood.

There are two kinds of blood, roughly speaking, one is dark red blood, one is bright red blood. The bright red blood comes out of the arteries, the dark red blood comes out of the veins.

The nurses here over and over again repeat that these bandages were soaked with bright red blood.

Now, you will have to understand how a bandage is put on. The bandage, the ordinary dressing which I suppose [fol. 340] was followed in this case is cotton is first a wad of gauze, quite thick, then some cotton, and then whatever else they want to put on, and then bandage, so that by the time the blood gets out where the nurses can see there is an awful lot of blood has come out of that man. All that cotton has to be saturated, that gauze, before it shows on the outside.

So I think this man lost a lot of blood, that is what I want to get out.

Now, those are the things that are outstanding.

There may be others that will come to me if I look at it.

Then, there is the utter absence of any, in this whole record, the word "delirium" never appears.

There is once or twice here a notation that the patient was incoherent, and another place the word "irrational" is used.

The patient was irrational.

Another thing that stands out here is that after the patient was in there some hours the temperature rose, the temperature rose to a great height. By temperature rising, I mean fever, high fever, and there is a chart here somewhere,—will you find it?

Q. I will find it.

[fol. 341] A. And one line is for pulse, do you remember?

Q. Now, there is a red line and a black line, which is which, Doctor, one is for temperature?

A. One means temperature and one means pulse.

The black is for temperature, and the red is for pulse.

I think we might dismiss the whole pulse question by saying that the pulse was even when he came in, I think it said 62, and it got constantly worse as he remained in there until it finally went up to great height, and finally stopped.

Now, where is that black line. Here it is. This black line runs up to—

Q. Here it is here.

A. Oh, here, see. It runs—

Q. The highest it reached was what?

A. One hundred and five.

Q. One hundred and four and one-half?

A. One hundred and four and one-half, and you see it kept rising, this temperature kept rising from down about normal, 98, kept going up, up, up all the time until it reached 104, and down here, here it is where he died, died with that high fever.

Q. I call your attention, Doctor, to the fact that there [fol. 342] was a constant and apparently rapid rise of the temperature.

Mr. Davis: When was that, Mr. Hay?

Q. On the 14th? A. Yes.

Q. The day of his death, beginning at 8:00 o'clock in the morning? A. Yes, sir.

Q. And running up to one hundred and four?

A. And a half.

Q. And a half at 2:30 in the afternoon? A. Yes.

Q. No, 12:30, that is 12:30. Then, at 1:30 it dropped down to 103, then at 4:30 it goes up to approximately 104, and the last entry made here has it standing at 104?

A. Yes.

Q. Which was 5:00 o'clock in the afternoon?

A. Yes.

Q. Now, I call your attention, Doctor, to the fact, coming in there—temperature history, that when the patient came in, there is a showing of normal, and that there is a gradual rise until—

A. I think over here.

Q. Over, on the night—

A. That would be 12:00 o'clock, 12:20.

Q. That would be on the night of the, that would be 12:20 A. M. on the 13th, it was about 99. Then it runs up here, so that at 3:00 o'clock in the morning it was 101; then [fol. 343] it dropped down again until it reaches about 99 at 8:00 o'clock on the morning of the 14th, when the sudden and rapid rise—

A. Which was fatal.

Q. Ensued that ended in his death. Now, Doctor, you speak about there being, and I call your attention to the fact that—well, to go back and get this history, this patient—you won't need your specs for this, Doctor.

A. All right.

Q. This patient came into the hospital, so the record shows here at 6:45 in the evening. He had had an injury which I think the evidence shows, and which there is no dispute about here, as I understand it, which consisted of the traumatic amputation, or as we laymen would say, the mashing off of his right arm, just about the upper third, between the elbow and the wrist; that when he came into the hospital the hand was hanging, and that part of the arm to which the hand was attached was hanging by two slender tendons, and they were clipped off with scissors; that he received first aid, and a dressing was applied, and that on the 13th, about 3:30 in the afternoon the arm was amputated at the elbow, you would call that a—

A. Disarticulation.

[fol. 344] Q. Disarticulation? A. Yes.

Q. At the elbow.

Now, I call your attention to the fact, Doctor, that this record shows that at 9:30, after he came in at 6:45 on the evening of February 12th, that Doctor, there is this entry, Doctor Brennan changed dressing, large amount of bright red blood, dry dressings applied. Patient very restless complaining of severe pain and worrying about his condition.

Now, that was at 9:30, some five hours after he was injured. There was that—now, this bright red blood, that is the blood, as I understand, which comes from the arteries and not from the veins.

A. That is right.

Q. Now, I notice that on the morning of the 13th there is this entry, Doctor Hoffenberg changed dressing, moderate amount of bright red blood; dry dressings applied. Condition of patient fair. Pulse rapid but good. Again there is the note of the bright red blood. That puts it the same, as coming from the arteries.

A. The arterial.

Q. Now, at 8:00 o'clock the same morning, I find this entry, bandage becoming saturated with bright red blood, tourniquet applied for short length of time. What is the [fol. 345] purpose of a tourniquet, Doctor?

A. Well, a twisted thing, the tourniquet. The tourniquet is any kind of appliance you would put around a limb, arm or leg, for the purpose of twisting it. I think everybody nearly knows what a tourniquet is, but in the hospitals they have one of rubber, and it is applied to the arm and then pulled tighter and tighter so as to shut off the flood from the arteries. The tourniquet is a French word meaning to turn around. You can take a handkerchief and put a stick under it, turn it.

Q. Now, I notice another entry on the morning of this last entry, say 8:00 o'clock, on the morning of the 13th, the testimony is that he was operated on and disarticulation, I believe you call it, at the elbow took place at 3:00 o'clock, or about 3:00 o'clock. A. 3:30.

Q. 3:30 of the afternoon? A. Yes, sir.

Q. Of the 13th? A. Yes.

Q. These entries of the flow of blood from the artery, this bright red blood that I have read you, have all been before the operation. Now, in taking off the arm at the elbow, Doctor, does one encounter arteries?

A. Yes, sir, certainly.

Q. And in the taking of the arm off, what is usually and [fol. 346] regularly done with respect to those arteries?

A. They are tied off.

Q. Tied off?

A. Tied off with ligatures, in this case cat gut ligatures I think were used.

Q. Now, then I notice that on the morning of the 14th, after this operation at 3:30 in the afternoon of the 13th, there is this entry, bandage becoming saturated with bright red blood. Then I notice also at 9:45 the same morning,



there is the entry, bandage saturated with dark blood, wet. What is the effect on a patient, Doctor, of the loss of blood?

A. The effect of a great loss of blood on a patient is to cause prostration, weak heart, weak circulation, tendency to collapse, and finally if not stopped, death.

Q. As you have reviewed this record, Doctor, would you say that there was more or less than a normal loss of blood for an injury of this kind?

Mr. Davis: I do not think he can possibly tell from that record, therefore, we object to it.

The Court: Sustained.

Mr. Hay: I do not know whether he can or not.

The Court: He is not going to. I sustained the objection, so he is not going to tell.

I sustained the objection.

Mr. Hay: Well, I will accept Your Honor's ruling.

[fol. 347] Q. Doctor, I believe you state that you do not find in this record anything indicating an excessive amount of trembling, [hallucinations]—

Mr. Davis: Wait a second. He did not state that.

Mr. Hay: Just a moment. All right.

Q. I will ask, you have given here what you denominate or describe as the characteristics of delirium tremens.

A. Yes.

Q. Which of those, if any, do you find any evidence of in this record?

A. There are none there. There is no evidence in that whole record of anything like delirium tremens, absolutely not.

Q. From your review of this report or this record, Doctor, are you able to form an opinion as to what was the major, the main or primary cause of this man's death?

A. This man's death, of course, I have to give this answer more or less guardedly, because I was not there, did not examine, did not hear his heart beat, and did not see his condition, judging entirely—

Mr. Davis: Wait a second, Doctor. That, we do not think he can say.

The Court: Read the question.

(The question was repeated by the reporter.)

The Court: He may answer.

[fol. 348] To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

A. Then, I will say again, this man's death, judging from the record which I have heard read to me and which I read myself, as here presented, judging from this record which is a fairly accurate record, I would say that this man died of an exhaustion, and exhaustion was due first to the shock, the shock of having his arm crushed, and then being brought over and the time elapsed going to the hospital, during which time he already lost a lot of blood. Then, secondly, from the loss of blood, and then thirdly, from the utter lack of, from utter inanition during the days the times he was there, not taking anything to sustain the body. I must modify that in this way, the doctors did give him glucose injections, and glucose injections are given with the intention of supplying food through the veins for sustaining the patient when the patient is unable to take food.

In justice to the hospital and the physicians, that was done, but the principal causes of death here were, first, great shock, second place, loss of blood. I have been unable to see anywhere anything like delirium tremens in this case, to cause death. There was no delirium tremens, that is my opinion, based on many hundreds of cases which I [fol. 349] have seen in my life. All the cardinal [symptoms] of delirium tremens were absent. I never saw a case in my life of delirium tremens that corresponded with the individual portrayed in this story.

Mr. Hay: That is all. You may inquire.

#### Cross-Examination.

By Mr. Davis:

Q. A man can die, you have known of cases where men do die of delirium tremens where they have been alcoholic and where they have received an injury? A. Yes.

Q. Yes, that is—

A. Yes, sir, I have seen them, too, but I never saw them without hallucinations and fear and horrors and sweating, and tremors, and all those things which go to make up the case. A lot of brown feathers on a bird don't make him a quail. He has got to have something else?

Q. And you have to have fur on a bear? A. Yes.

Q. Now, Doctor, it does say in here he was—

The Court: It can be a bear without fur, can it?

Mr. Sheppard: It can't be a bear without having fur, though.

[fol. 350] Mr. Hay: Well, if he had no fur he would be very bare.

Q. This does say, Doctor, that he was incoherent and irrational? A. Yes, sir.

Q. Now, isn't that an indication of the fact that he is nervous?

A. Oh, yes, sure. He was not only nervous, he had a temperature of about 103 or 4, which will make anybody incoherent. All the incoherency in this case was due to fever.

Q. Now, Doctor, you did not treat this man?

A. Certainly not. If I did I gave him absent treatment, and do not know it.

Q. You know Doctor McQuillan, do you not, over in East St. Louis? A. Who?

Q. Doctor McQuillan?

A. I am not acquainted with the gentleman.

Q. You know St. Mary's Hospital over there?

A. Yes.

Q. That is a Catholic institution? A. Yes.

Q. And you know that is a reputable institution, do you not?

A. Yes, sir, as far as I know. I have never had anybody over there.

Q. Well, you know its reputation?

A. Yes, sure. I say that, yes, absolutely yes, first class [fol. 351] hospital, first class doctors. They know their business and they did everything in the world for this man, as the record shows. There is no criticism of the doctors whatever, only two doctors will treat a case a different way, according to their own like, and according to the

many years behind them of experience. However, if I was giving this man whiskey, for instance, now Doctor McQuillan may be right, I may be wrong. I do not say that. But I say in the many years I practiced, if I had a man like that, and was going to give him whiskey, I would give him big doses of whiskey or I would let him alone and give him none, on the theory a little dose just excites.

Q. That is a matter of judgment?

A. That is pretty good judgment.

Q. I say, that is a matter of judgment?

A. Yes, a matter of opinion.

Q. With the individual doctors?

A. That is right.

Q. There is no conflict with the doctor because his judgment is something else than other doctors?

A. That is right. Some doctors do not believe in giving whiskey at all, and some lawyers do not either.

Q. Well, there are some of us that do, possibly.

Mr. Hay: Only one lawyer that I know of that does not believe in it.

[fol. 352] The Witness: Yourself.

Q. Now, Doctor, you said that paraldehyde—is that the correct word? A. Yes.

Q. Was given to quiet his nervous system? A. Yes.

Q. And delirium tremens is an affection of the nervous system, isn't it? A. The what?

Q. An affection of the nervous system?

A. Delirium tremens?

Q. Yes.

A. Yes, but that is only one of a thousand. The fact he took paraldehyde does not make him have delirium tremens at all. Paraldehyde is used in a general way for all nervous cases, especially to produce sleep, which it did not do in this case.

Q. It could be used for delirium tremens?

A. It could be and is.

Q. Now, Doctor, morphine, you say very often at intervals they gave him one-fourth grain of morphine?

A. Yes.

Q. And morphine is given to affect the nervous system, quiet the nervous system?



A. In this case it was given more for pain, which was good treatment all right, good treatment, but it produces the crazy head. It had to be done, but it produced this [fol. 353] incoherent talk, that together with the high fever.

Q. Now, the whiskey they gave him was always to relieve his nervousness, wasn't it?

A. Well, I think that was more given to stimulate his heart.

Q. Stimulate his heart?

A. Yes, I think, probably you know, little doses of whiskey won't quiet your nervous system but make you more excitable; but they probably gave that little whiskey to sustain his heart.

Q. Now, I think the testimony here is, Doctor, that he had been away several days before he, that day of this accident, and if he had been away several days—I think the testimony is that he never went to work while he was drinking. I think that is the testimony.

Mr. Hay: Well, I did not say anything.

Mr. Davis: I thought you were going to.

Mr. Hay: I just grunted.

Q. If, Doctor, he had been away for several days, and I believe you said that in several days the sclerol came back to normal?

A. I do not get that. What is that?

Q. The sclerol. A. How?

Q. That it took several days for a man's eyes to clear up? A. Yes.

[fol. 354] Q. And if he had not been drinking for several days, then that would not have been shown, his eyes at that time would not have shown that he had been drinking?

A. No. The visible effects of a man who has been on a drunk, as everyone knows, without being a physician, the visible effects pass away in three or four days, the blood-shot eyes clear up, and the sallow complexion and the sallow tongue and bad breath, and all that disappears in three or four days if he quits drinking.

This man came into the hospital in perfect condition. •

Q. Do the eyes always get blood shot when a man is drinking?

A. Now, it depends on the brand he drinks.

Q. And it depends on the man too, doesn't it?

A. Yes, somewhat.

Q. So this man may have been drinking at this time and not had bloodshot eyes?

A. No, no. I do not see how that follows. You are drawing a wrong conclusion. You have just asked whether they did not disappear in three or four days. I said yes.

Q. I said, when a man drinks, gets drunk, his eyes do not always get bloodshot.

A. No, not every man's.

Q. That is what I am saying; this man may have been [fol. 355] drinking and not be a man whose eyes become bloodshot, whose eyes showed anything?

A. We are dealing entirely here with probabilities, because nine men out of ten, ten men out of ten will show in their eyes when they are getting over a drunk.

Q. We are not dealing with probabilities. We are dealing with what happened in this case, Doctor.

A. All right.

Q. And you do not know what happened to this man in this case, or whether whiskey effected him in that way or not, do you?

A. No, no. No, I don't know. I simply know what I see there in this record; plenty there.

Q. Now, you say the cause of his death, as you said, was the shock, and the loss of blood between the time that he was injured and he got to the hospital?

A. No, I did not.

Q. What did you say?

A. I said that added to the other, I said he must have had a lot of blood lost, because he lost some from the accident and he lost some after the disarticulation at the elbow. That is what I said.

Q. And you saw nothing of delirium tremens in this case, as far as you are concerned?

A. No, absolutely not. I am sure of that as I am living, [fol. 356] that this man had—

Q. And yet this other doctor may have thought that he died in this case of delirium tremens?

A. Oh, another doctor might think that, but let me say this, please, without bragging, and I am in a United States District Court, I honestly believe I have seen more delirium tremens cases than any man living in this State, without exception. In my life, I have been forty-nine years of it, and I never did see a case of delirium tremens which corresponded with a story like that.

Q. Well, you have seen cases where a man got injured and then had delirium tremens?

A. Yes, it is quite common, and that leads them into error. They expect it, they are looking for it. That is why they call it delirium tremens, for they are in the constant expectation of seeing a man who is an alcoholic injured, it happens so often that naturally any doctor, especially a young doctor who has not had a great deal of experience, will say, "Well, here comes delirium tremens now".

Q. Well, this doctor I think said he graduated from Washington University in 1903 and taught at St. Louis [fol. 357] University for a number of years.

A. Yes.

Q. And graduating in 1903, he would not be a young doctor, would he?

A. No, I did not say that he was the young doctor. I am speaking generally, that a young doctor might be looking for this, and so far as these doctors are concerned, please, I am not criticizing them.

Q. No. I know that.

A. No. You know I would not do that. I would not appear on this witness stand for anything in the world if I had to criticize my fellow practitioner, unless he was a bad egg, and then I would do it gladly.

Q. But, if the doctor in this case got a history of the fact that he had been drinking just before this time, then under those circumstances wouldn't you think that he was justified in—

A. Suspecting.

Q. Saying that the cause of death—

A. In suspecting it, yes, he would be justified in suspecting something like that, and I could not blame anybody for looking for delirium tremens with this background, but it is that, there are certain unalterable [symptoms] and inevitable [symptoms] that must be present to make this dis-

[fol. 358] ease, and one of them is the fear and the other is the sweats, and the other is the tremors and the other are the visual hallucinations, and all of them are absent, all of them.

Q. Doctor, that is your opinion as a physician whom I have known of anyway in this City for years and years.

A. Yes, sir, that is my opinion.

Q. That is your opinion.

A. That is my opinion.

Q. Now, some other doctor may justifiably disagree with you?

A. Absolutely, and when doctors disagree, you bet your money and you take your choice.

Q. He may be right and yet you believe he is wrong, isn't that true? A. Yes.

Q. And he may be right and he may believe you are wrong? A. That is right, that is right absolutely.

Mr. Davis: I think that is all, Doctor.

#### Redirect Examination.

By Mr. Hay:

Q. Doctor, Mr. Davis asked you if the St. Mary's Hospital was a reputable hospital. A. I am not getting that.

Q. I will come around.

A. You are walking away from me to talk.

Q. Well, I will come up here.

[fol. 359] A. Yes. Well, come up and talk.

Q. Doctor; when you speak of the absence of any record here showing delirium tremens you are referring to the history made in the hospital from day to day, as he was treated?

A. Yes, everything contained in that paper, in that bunch of papers.

Q. And the only reference to delirium tremens in this hospital record was made at the time of his discharge, and then it was put down as the main cause of his death, delirium tremens?

A. That is the first and only time it appears.

Q. And so far as the hospital records are concerned, there is not a single reference to delirium tremens, and the only reference is by this doctor who sums that up?

A. Yes.



Mr. Davis: If it may shorten it, I think the hospital record speaks for itself in that regard.

Mr. Hay: We wish in connection with the examination of this doctor, to offer the hospital record in evidence with the right to the defendant to read any portion they see fit, and we would like to have the same right.

Mr. Davis: Now, Your Honor—

The Court: What about the doctor, are you leaving him on the stand or are you through with him?

[fol. 360] Mr. Davis: I am through with him as far as I am concerned.

Mr. Hay: That is all.

Mr. Davis: That is the hospital record offered here. It was not introduced in evidence. Mr. Hay, which I think he had the right to do, told Doctor McQuillan he was going to take that irrespective, but that is a St. Mary's Hospital record, and it has got to go back there.

Mr. Hay: Well, I would like for the proper order to be made authorizing the withdrawal he made for the purpose of returning there, but I would like, for the purpose of this trial, it to be considered in evidence.

The Court: All right, Mr. Hay.

Mr. Davis: I do not think there is anything in it except something he may want to argue.

The Court: When you substitute a copy I may authorize the withdrawal.

Mr. Davis: Of course, a court can do a lot of things but I do not think the Court can take a hospital record of that nature and impound it.

The Court: What I am suggesting—I would not do that,

Mr. Hay: Yes. I will undertake to have a copy of it made.

[fol. 361] The Court: I am asking whether or not he has offered it, if he would.

Mr. Davis: I wonder if they could make a copy over there and return it.

The Court: It would not have to be done that way.

Mr. Davis: We will work that out, Your Honor. I do not want, of course, to embarrass them by keeping it here.

The Court: But you are entitled to have a copy in the record.

Mr. Davis: Oh, yes, yes, sir.

Mr. Hay: Mrs. Hamm, will you come around, please?

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MRS. MINNIE HAMM, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further on behalf of the plaintiff, in rebuttal, as follows:

#### Direct Examination.

By Mr. Hay:

Q. Mrs. Hamm, you have been sworn and have been identified as the wife of Mr. Henry Hamm, who has been referred to here, and the daughter of the plaintiff, Mrs. Stewart? A. Yes, sir.

Q. Now, Mrs. Hamm, did a gentleman by the name of [fol. 362] Haun come to see you at any time before a settlement was made of the case?

A. Yes, sir, several times.

Q. Speak out just a little louder.

A. My mother and I, he came to see of course.

Q. When did he first come to see you?

A. Well, he come to see my mother just about a week or two after my dad was buried. That was just visiting, conversation, that was all.

Q. And when did you next see him?

A. Well, let's see. He told us we could expect him back, and I know we waited a little longer than we had expected. It must have been about a month, I believe.

Q. You remember the occasion of your mother's employing Mr. Noell to represent her in this case?

A. Yes, sir.

Q. About the 16th of April, 1937? A. Yes, sir.

Q. And of her appointment thereafter as administratrix? A. Yes, sir.

Q. In April, 1937. I believe it has been testified here that your mother went down to Coulterville to visit a niece down there? A. Yes.

[fol. 363] Q. Between the time of your father's death and the time she went down to Coulterville, did you know how many times she was seen by Mr. Haun, that you know of?

A. I believe it was twice after his first visit.

Q. Now, did anyone else come to see you representing himself as assisting Mr. Haun or the Southern Railroad Company?

A. Yes, in between his second visit and the last, the day my mother went to Coulterville, a man came one night, well, I believe it was before Mr. Haun's second visit, he came one night and there was a train man representative there, and he said he would not come in, however, since he saw we had someone there, he barely came to the door. He did not even see my mother that night, just saw me; and then he left and he came back after my mother had seen Mr. Haun the second time, and he sat and talked to us that time.

Q. Who was that? A. Mr. Renow.

Q. Is that the gentleman that was identified here, sitting over here?

A. Yes, sir, and he had papers referring to the Southern showing us that he was connected, and knew really the inside information on the whole thing, and he had statements there that Mr. Haun had come and talked to my mother, and that she had not been feeling well, she was very nervous and worn down, and had talked to him [fol. 364] in a bathrobe, and the general conversation that had taken place. In that way he tried to show us he was connected.

Mr. Davis: Wait a second. Don't tell us what he tried.

A. Well, he did.

Mr. Davis: I ask that that be stricken, if the Court please.

The Court: Sustained.

Q. Well, what did he say to your mother?

Mr. Davis: In your presence, if I may say, in your presence.

A. Yes, sir, that was all in my presence. I can't just remember how his conversation started, but he suggested that we get an attorney, one that he knew was good, a Mr. Stillwell, from Hannibal, Missouri, and that, I don't remember if he suggested a man that he would offer, or that he thought was good, but he did suggest our getting this man to settle the case.

Q. Was that before your mother went to Coulterville?

A. Yes, sir.

Q. Did he make any representation at any time that he had been a friend of your father?

A. He said that he knew him, but I can't remember my [fol. 365] dad ever mentioning him.

Q. Now, did you later have any talk with Mr. Renow, either in your mother's presence or in, not in your mother's presence?

A. He come back when my mother was in Coulterville, I do not know—I did not know she was to come back so soon, but he told me that my mother was coming back, and he wondered if she was there yet. That was, I guess about 9:30 because my husband was not home from work yet, and he was quitting at 11:00 at that time.

Q. When was this?

A. That was the day before, I believe, or else just a little earlier in the evening to the day she did come from Coulterville.

Q. That was in November? A. No, in the spring.

Q. In the spring? A. Yes.

Q. She came back from Coulterville? A. Yes.

Q. Did he see her there when she came back from Coulterville?

A. No, I don't think he did right then. I can't remember him seeing her.

Q. Well, did you know of his talking to her or talking to you after that time, before the day of the settlement?

Mr. Davis: Who was that?

Q. Mr. Renow. A. Repeat that, please.

[fol. 366] Q. Did you have any further talk with Mr. Renow after that about it, in that form?

A. No, I don't believe I did.



Q. All right. Now, Mrs. Hamm, coming down to the time immediately before the carrying out of this arrangement whereby your mother signed some papers, your mother had been, was at that time down in Castleton, Illinois? A. Up in Castleton, yes, sir.

Q. Castleton. A. Up in Castleton, yes, sir.

Q. When did she return from Castleton?

A. It was Thanksgiving Day, we received a telegram, my husband rather, and immediately I wrote and told her about it and sent the message enclosed in my letter, and she came home I guess the very next day after she got it. Of course, that was immediately, as she could.

Q. Now, your husband had before that been over to see Mr. Howell, as I understand? A. Yes, sir.

Q. And you knew that he had been to see Mr. Howell?

A. Yes, sir.

Q. Now, when she came back were you present when the conversation was had between your husband and your mother? A. Yes, sir.

[fol. 367] Q. About what had taken place between Mr. Howell and Mr. Hamm? A. Yes.

Q. Speak up so that the reporter can get it.

A. Yes, sir.

Q. Just tell us what was said in that conversation.

Mr. Davis: Now, Your Honor, we think that that, anything of that nature is self-serving.

It is hearsay.

The Court: What conversation is this?

Mr. Davis: This is the conversation that Mrs. Hamm, Mrs. Stewart had with Hamm.

• Mr. Hay: It was after the visit to Mr. Howell.

Mr. Davis: It is self-serving, may I say, and hearsay, and then there was nothing in that conversation that he related to her with Judge Howell that could possibly affect this case in any way.

The Court: Well, of course, there is only one theory on which it is admitted. I admitted it on that theory.

The objection is overruled.

Mr. Davis: It undoubtedly could, Your Honor, if there was anything said, but there was nothing said.

The Court: I think it is justified. The objection is overruled.

[fol. 368] To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Go ahead.

A. What was the question, please?

Mr. Hay: Read the question.

(Question read.)

Q. That is the conversation between Mr. Hamm and your mother with respect to what had transpired between Mr. Howell and Mr. Hamm.

A. Well, he related just the conversation as near as he could recollect it, that had gone on in Mr. Howell's office.

Q. Give us as near as you can what he told your mother.

A. Well, he told, that he had been called over to the Legal Department, and that it is not ordinarily done.

Mr. Davis: Now, wait. Did he tell her it was not ordinarily done?

A. Yes, sir. It was out of the ordinary, and that he knew it had a meaning behind it, and he asked Mr. Howell just what he wanted to see him about, and he said, well, it was pertaining to his mother-in-law's case, he said he had not known there was a case.

The Court: Now, don't say "he".

Mr. Hay: Mr. Howell.

[fol. 369] The Court: You confused it. Call names.

A. Mr. Howell told him that he had not known about it until he had been informed about it, by Mr. Campbell and Mr. Haun, and Mr. Haun's card was on the desk at the time. He handed it to my husband and he said it would be very good if he settled this thing.

The Court: Who said that?

The Witness: Mr. Howell. Beg pardon.

The Court: Told your husband?

The Witness: Told my husband, yes, told him it would be good if he would do his very best to settle the case, and since he had put himself in the thing, his own interest, my husband knew there was only one thing it could mean, was business.

Mr. Davis: I move that that be stricken out.

The Court: Sustained.

Mr. Hay: You understand, under the rules of evidence we have to eliminate certain things.

Q. Tell us what Mr. Hamm said to your mother, not what you thought about what Mr. Hamm said to your mother.

A. He told my mother it could only mean business, that they did not fool around inviting fellows over from work like that to have conversations with them, and that they did not have to make a threat, their being interested [fol. 370] in it was enough, and when they suggested—

Mr. Sheppard: Just a moment. We move to strike that out, Your Honor, first because it is not responsive to the question. That is not what Mr. Howell said at all.

The Court: Let counsel make his objection.

Mr. Sheppard: First, because it is not responsive to the question for the reason that she is not telling what her husband said Mr. Howell said, she is telling what her husband told her mother; she is filling in the matter which is wholly incompetent in this case. It does not tend to prove fraud, duress or anything else, except how he felt about it, and deductions he drew from what had transpired previously. That certainly is as far from competent testimony as one could imagine.

The Court: I do not know. It seems to me if this testimony is competent at all it probably makes it all competent.

Mr. Hay: Yes.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Go ahead.

The Court: It is now time that we recess, Mr. Hay. Announce a recess until 2:00 o'clock.

[fol. 371] At this point, 12:30 P. M., a recess was had until 2:00 o'clock P. M.

After recess, at 2:00 o'clock P. M., Monday, June 12, 1939, the following proceedings were had:

The Court: Proceed, Gentlemen.

Direct Examination, Resumed.

By Mr. Hay:

Q. Mrs. Hamm, when we adjourned at recess I had asked you to relate the conversation between your mother and Mr. Hamm following his visit to the office of Mr. Howell, and Mr. Campbell. Now, will you proceed and relate anything additional that was said during that conversation?

A. Well, since she had not been home when he had gone to Mr. Howell's office, he told her that he had gone there, and that he and Mr. Howell had talked, and I won't need to tell the conversation, shall I, that was carried on in Mr. Howell's office?

Q. I want you to tell as fully as you can.

A. Well, he repeated that to my mother. Shall I state that?

Q. Now, understand, Mrs. Hamm, what I want is what was said between Mr. Hamm and your mother, not anything you thought about it, or who thought, but what was said. Just go ahead and relate all that you can recall of that.

[fol. 372] A. He told her he had gone to Mr. Howell's office, and that he had asked him about my mother's case with the Southern, and he would like that my mother settle this matter; and my husband told my mother that it would be a very good thing to do because him being called in there, it seemed that his company's interest was aroused towards this thing, and it would be the best thing concerning my husband's position to have her go down and settle the thing; that this wire had been sent to my husband which connected him more than ever with it, so he thought that was the only, rather he told her that was the only thing to



do, since he was concerned in it, and she and I both thought it was too, regardless of what the terms might be, when we got there. We all went down there then.

Q. Then you went down to the office?

A. Yes, sir.

Q. Of Mr.— A. Campbell.

Q. Campbell?

A. He was not present, but Mr. Wiechert had his position in the—

Q. Now, something was said here about your having been at the office of Mr. Campbell before that. Had you?

A. Yes. After we received this telegram, it was impossible to get her there at the date set, and after all it was Thanksgiving Day, the date mentioned on the telegram, [fol. 373] the 27th of November, I think it was.

Q. Yes.

A. And so I went down to tell Mr. Campbell that she would not be able to be there, and of course, I do not remember if I even talked to him, I think I just talked to the girl in the outside office, and she, of course, told him.

Q. Now, you went with your mother at the time she went to the office of Campbell and Wiechert? A. Yes, sir.

Q. Pursuant to this telegram? A. Yes.

Q. And who else was with you?

A. My husband and my mother.

Q. Now, will you just tell the jury what occurred at that office, as nearly as you can recollect it?

A. When we got there Mr. Campbell was not there again, so we saw Mr. Wiechert, who seemed to have all the things prearranged, and Mr. Haun came in directly, and we went over this thing in general, I mean it was all explained, just what my mother was to do, and the papers were shown here that she probably don't remember just everything she read. I wouldn't either, and I think they were all passed around for my husband and myself to read, too. But that did not seem to interest me so much, because the settling of the deal was the main object that [fol. 374] I was there for; and then they—let's see, Mr. Haun came in, of course, he was there, then they suggested that she have this representative for the thing, which was necessary, and not knowing any attorneys outside of her own, why they suggested Mr. Felsen, and he

was directly brought in by Mr. Haun, then this thing was reread aloud by Mr. Felsen.

After that, we talked about what my husband would have, the connections he had in the thing, of course, it was nothing to him really, but he was brought into it, and we talked over that.

Q. What was said about that?

A. Well, I brought up the subject myself. I said it just did not seem fair to bring someone else into it, like my husband and myself, where it was really my mother's own, her case, and her ideas and things, what to do, what she thought best. In cases like that people generally do not give their opinion because it may be wrong, and they are to blame.

So I said I could not see where it was fair to bring my husband and his job into it. A job meant a lot to anyone of our age, especially after he had the seniority he did, and Mr. Wiechert said it could be done and had been done; and we did know of [—] case where it had been done. [fol. 375] So then we proceeded—

The Court: Is that the exact language that he used, it could be done?

A. It could be done and it had been done, yes, sir.

The Court: Is that the exact language he used?

A. Yes.

Q. Now, what brought forth that remark, what was said by you or anyone else to lead up to his saying it could be done and it had been done?

A. Well, I said it just did not seem fair, that there was no necessity, or need for my husband being brought into it, and I could not see why they could bring someone else into it, but knowing that my husband's job would be on the scale—just like the man on the jury yesterday, he was dismissed because he could not give his own opinion, it meant something, he could not express, he could not give his own ideas what it meant because it would be threatening his job.

Q. Now, had your husband as well as you and your mother discussed the possibility of his losing his job?

A. Yes, sir. That had been the main theory.

Mr. Davis: We object.

The Witness: In the thing.

Mr. Davis: Your Honor, unless there is some evidence [fol. 376] we are responsible for it in any way. I do not think there is any evidence here we are responsible for it.

The Court: Overruled.

Mr. Davis: There is certainly nothing in Judge Howell's testimony of anything that they testified to.

Mr. Hay: There is certainly evidence here—

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Hay: All right.

Q. Just what had been said between your husband and your mother and yourself when you went, when you talked about the possibility of his losing the job?

A. Well, after he was brought into it by going to Mr. Howell's office, it just seemed that the main interest was centered on him then, it seemed the last remark, or something, nothing else had moved the thing or put it in their direction.

Q. As I understand you, in this conversation in Mr. Wiechert's office, you brought up the question as to whether or not his job might be in jeopardy, is that right?

A. Yes, sir, I directly—

Mr. Davis: We object to that.

The witness: (Continuing)—brought it up, because that [fol. 377] is what it seemed to me.

Mr. Sheppard: We object to that. She has already testified exactly how it came up.

The Court: Sustained.

Q. Now, after this conversation in Mr. Wiechert's office, what was done then with respect to the agreement to take the five thousand dollars?

A. After that we were all about ready to leave—let's see.

Q. Well, I am not particular about the exact time on that. After that you went ahead and went over to Belleville, after that, did you?

A. Yes. We went to Belleville after that.

Q. And up to the time that this discussion was had with your husband in the first instance, in which he related the conversation with Mr. Howell, and up to the time of this conversation in Mr. Wiechert's office, had your mother ever to your knowledge indicated that she would accept five thousand dollars?

A. No, sir, I can't remember even knowing what the offer would be when we got there.

Q. Now, who were present in the room at the time the things transpired in Mr. Wiechert's office?

A. Mr. Felsen, Mr. Wiechert, Mr. Haun, my mother, my husband and I.

[fol. 378] Q. Mr. Felsen had been brought in, as you say, by Mr. Haun? A. Yes, sir.

Mr. Hay: That is all.

#### Cross-Examination.

By Mr. Davis:

Q. Mrs. Hamm, now I understand you that your husband told her, that your mother on this occasion that you mentioned, that he had been over to Judge Howell's office, and that, what was it that Judge Howell said that your husband said he said?

A. He said it would be very nice, very likely and agreeable if he would talk my mother into settling this case.

Q. Your husband said that he said that?

A. Yes. I was not there.

Q. What else did your husband say to your mother at that time?

A. Well, I just can't remember exactly the conversation, of course, but he told her that he had been called there, and that things like that do not occur ordinarily, and that Mr. Howell's interest in the thing looked as if it was just a thing that he would have to do.

Q. Now, he did not say that Judge Howell said that?

A. Oh, no.

Q. No. A. That was understood.



Q. Did he say that Judge Howell told him that he had [fol. 379] understood that they were offering five thousand dollars, did he tell your mother that, and you, on that occasion? A. No, I don't remember that.

Q. And that question was as to whether or not your mother could get this five thousand dollars net?

A. No, I don't think he even mentioned any five thousand dollars, or anything about it, except it would be advisable to have her settle.

Q. Did he say anything that Mr. Campbell said at that time?

A. No. He told him to go to Mr. Campbell's, as near as I remember.

Q. And he did go to Mr. Campbell before he saw you?

A. Before he had seen me.

Q. Yes. A. Yes.

Q. Did he tell your mother what Mr. Campbell said?

A. He told me, I can't remember if my mother was there right then.

Q. He told you, you do not remember whether your mother was there right at that time. Now, that is all that your husband told your mother, is that it, that Judge Howell said it would be nice for him to settle, and that your mother, he thought he knew what that meant, that is what he told her, in effect?

A. He told her it would be the thing to do.

Q. The thing to do? A. Advisable.

[fol. 380] Q. That Judge Howell said that it would be the thing to do? A. Judge Howell, yes.

Q. Said it would be the thing to do? A. Yes.

Q. He did not say that Judge Howell had threatened him in any way? A. No, he could not do that.

Q. How? A. He would not do that.

Q. Judge Howell would not do that? A. No.

Q. No, I don't think he would. And he did not say that Judge Howell told him he would lose his job, did he?

A. No, he could not do that either.

Q. You mean by that, that Judge Howell would not do it?

A. No, he would not need to. A suggestion would show slight signs of interest, and he did not ordinarily have interest in the men's lives that worked for him.

Q. And he did not tell your mother that Judge Howell threatened him with his job, or anything of that nature?

A. No. He did not tell him he threatened him.

Q. Now, when you got over to Mr. Campbell's office, you went after getting this telegram, or your husband getting it, you went over there twice, did you not?

A. I went by myself once, to arrange this meeting, and I went with my mother and husband afterwards.

[fol. 381] Q. Who did you see when you went the first time?

A. I can't remember. It may have been a secretary, just outside the office. I just made arrangements for the day when she would get there.

Q. Then, when you went over there, what time did you get there?

A. You mean the time we all went?

Q. Yes.

A. Oh, I judge around ten o'clock. I can't remember that.

Q. And as you say, you sat there and you read the papers? A. I think so.

Q. You read them all?

A. I think so, as near as I can remember.

Q. And Mr. Hamm read them all?

A. He read more than I read.

Q. And your mother read them, didn't she? A. Yes.

Q. And then when Mr. Felsen came in, Mr. Felsen read them? A. He read them aloud, yes, sir.

Q. And you said that it did not seem fair to bring your husband in it, and his job in it, and then Mr. Wiechert said that it had been, it could be done and it had been done? A. Yes, sir.

Q. Was that all that was said?

A. Oh, I don't remember. There was just, I guess a [fol. 382] lot of general conversation, because they seemed interested in settling the case, and my husband and I, that was the purpose we had gone there for.

Q. You and your husband had gone there to settle the case? A. Yes.

Q. And your mother with you? A. Yes.

Q. But I say this thing about what was said about your husband, it did not seem fair to bring, you said to Mr.

Wiechert, it did not seem fair to bring "my husband in it and his job in it", and then Mr. Wiechert said "it could be done and it had been done"? A. Yes.

Q. Now, was that all that was said about that?

A. About his job?

Q. Yes.

A. I don't remember, but that was enough, I think.

Q. You think that was enough? A. Yes, after—

Q. But that is all that you remember being said, at the present time? A. I think so.

Q. Now, you went down to the Probate Court, did you not? A. Yes, sir.

Q. And when you got down there the papers were read over?

A. I don't remember if they were read over or not. They did look at them, and my husband and I signed as [fol. 383] witnesses, I do remember that.

Q. And you went to see the Probate Judge with your mother, did you? A. Yes.

Q. And did she sign the papers there?

A. I just can't remember that.

Q. Did she swear to it? A. She probably did.

Q. Did she swear to it before the Probate Judge rather?

A. She probably did.

Q. Well, do you remember that?

A. No, I do not.

Q. Now, where is Mr. Hamm today?

A. He is working.

Q. He is working?

A. Sleeping now, because he works nights.

Q. He is still working for the Terminal Railroad?

A. Yes, sir.

Q. You are still living with him as his wife?

A. Yes, sir.

Q. Now, the only man that said anything about a job was Mr. Barrett, wasn't it?

A. That was told to my mother-in-law, yes.

Q. Told to your mother-in-law?

A. Concerning that pass, that pass was not mentioned, that subject.

Q. Well, Mr. Barrett said it was, didn't he?

A. Mr. Elliott mentioned it here at the other hearing, yes.

[fol. 384] Q. Mr. Barrett mentioned it at the other hearing, too, didn't he?

A. I can't remember. I remember Mr. Elliott did; he probably did, yes. As I say, that was told me by someone that he had, so I do not know exactly what he had said.

Q. But that had nothing to do with anybody with the Southern Railroad, what he said, did it? A. No.

Q. Whatever Mr. Barrett said. What was it that Mr. Barrett—did you hear him say it? A. No.

Q. You did not hear him say it?

A. No, I was—it was told me.

Q. Told you? A. Yes.

Q. Who told you? A. My mother-in-law.

Q. Did they tell your mother at the same time?

A. No.

Q. They did not tell your mother?

A. My mother was not there then.

Q. You do not know that Mr. Barrett ever had any conversation with anybody with the Southern Railroad?

A. No, sir. He was supposed to have talked to Mr. Elliott from the Terminal Railroad.

Q. From the Terminal Railroad? A. Yes.

[fol. 385] Q. And what was that conversation about?

A. Well, it was told me, it is hearsay.

Q. Well, who told you? Well, don't—

Mr. Hay: You have been going into this.

The Witness: You have been asking me about it.

Mr. Hay: Asking for hearsay, and making innuendos about it.

Mr. Davis: No. I am not asking for hearsay. I thought it was, what was told her and told her mother.

Q. Did this conversation with Mr. Wiechert come up, where he said that it, you said it did not seem fair to bring "my husband in it and his job in it", and he said, "it could be done and it had been done"? Was that before or after the papers were signed?

A. That was before, that was when we first got there.

Q. Before the papers were signed.



Mr. Davis: That is all.

Mr. Hay: That is all.

(Witness excused.)

H. B. HAUN, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further on behalf of the plaintiff, in rebuttal, as follows:

[fol. 386] Direct Examination.

By Mr. Hay:

Q. Mr. Haun, I will ask you whether or not you requested or authorized, or requested and authorized Mr. Renow to do anything toward assisting you in making this settlement? A. Yes, sir, I did.

Q. Did you also get in touch with a man by the name of Hanley, down in Kentucky, and ask him to assist you?

A. Yes, sir.

Q. Did you also go to Mr. Joe Howell, the General Counsel of the Terminal Railroad, and ask him to call Mr. Hamm, the son-in-law of Mrs. Stewart, in?

A. Yes, sir.

Q. You know, do you not, that at that time and at the present time, Mr. W. N. Davis, the gentleman who has been actively conducting the defense in this case, is attorney for the Terminal Railroad? A. Yes, sir.

Q. And that Mr. Sheppard, who sits over here, is also an attorney for the Terminal Railroad?

A. I have known that since this hearing started. I never knew Mr. Sheppard until—

Q. You also know that the Southern Railroad has counsel in this City?

A. Yes, sir, and in this room, Mr. Lucas there.

[fol. 387] Q. That the gentleman sitting back here, Mr. Lucas, is attorney for the Southern Railroad?

A. Yes, sir.

Mr. Hay: That is all.

## Cross-Examination.

By Mr. Davis:

Q. You also know, that Mr. McPheeters, who is counsel for the Southern Railroad, has died since the beginning of this trial, do you not?

A. Yes, sir. I attended his funeral.

Q. I mean at the beginning of this suit.

A. Yes, sir. I attended his funeral.

Q. Now, Mr. Haun, where do you live?

A. I live in Webster Groves.

Q. And your business? A. The location?

Q. No, what is your business?

A. I am at present rated Assistant Chief Claim Agent for the Southern Railroad Company.

Q. You know something about the settlement of this case with Mrs. Stewart, do you not? A. Oh, yes.

Q. Just relate what happened.

Mr. Hay: Just a moment. We object to that as cross-examination of the witness. If the gentleman wants to go [fol. 388] into that in his own case, we have no objection.

The Court: Sustained.

Mr. Hay: I think just the orderly procedure, Your Honor, is the only thing I have in mind.

Mr. Davis: Well, I will say frankly it is new procedure to me, Your Honor. It may be the procedure in this court.

The Court: What did you ask him on cross-examination about, Judge?

Mr. Davis: I asked him to relate the happenings.

The Court: That is not cross-examination.

Mr. Davis: He has related part of it.

The Court: That is not cross-examination, Judge. This man has been put on here by the plaintiff as his witness.

Mr. Davis: Yes.

The Court: And that is certainly not cross-examination.

Mr. Davis: Well, possibly I am mistaken.

Mr. Sheppard: What is it, Your Honor? It is not direct examination?

The Court: You are not interrogating me, are you?

Mr. Sheppard: No, but I just wondered. I could not understand it, that is all.

[fol. 389] Mr. Hay: May I undertake to explain, I put the gentleman on as our witness, to ask him certain specific questions.

The Court: You may cross-examine him on those questions asked of him.

Mr. Hay: Yes. This does not relate to anything I asked him.

The Court: That is all.

Mr. Hay: That is the point I make.

Mr. Davis: Frankly, I knew that applied in a criminal case. I did not know it applied in a civil case, but I am probably mistaken.

Mr. Hay: That is under the new rules.

It has been the rule here in the Federal Court, well, I have known about it for forty years.

Mr. Davis: Sixty, Mr. Hay, or seventy.

Mr. Hay: Sixty.

Mr. Davis: That is all at the present time, Your Honor.

The Court: Very well.

Mr. Davis: That is all.

Mr. Hay: That is all we have at this time, Your Honor.

And thereupon the defendant, to further sustain the is-  
[fol. 390] sues in its behalf, offered the following evidence  
in surrebuttal:

Mr. Davis: May I recall Mrs. Stewart, please?

The Court: Very well.

Mr. Davis: Mrs. Stewart, will you come around, please?

MRS. MARY STEWART, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon be-

ing recalled to the witness stand, testified further on behalf of the defendant, in sur-rebuttal, as follows:

Direct Examination.

By Mr. Davis:

Q. Mrs. Stewart, when you got this check or draft for five thousand dollars, you deposited it in what bank in Illinois?

A. In the Southern Bank.

Q. The Southern Bank? A. Yes, sir.

Q. And then you drew it out of the Southern Bank?

A. Yes, sir.

Q. And then you took it over and tendered it to Mr. Wiechert?

A. Yes, sir.

Q. And he refused to accept it? A. Yes, sir.

Q. And then what did you do with the money?

A. The Mercantile Trust.

[fol. 391] Q. In St. Louis, Missouri? A. Yes, sir.

Q. Have you used any of that money?

A. Yes, sir.

Q. How much have you used?

Mr. Hay: We object to that, Your Honor.

The Court: Sustained.

Mr. Davis: Your Honor, that shows ratification.

Mr. Shepard: Let us make our offer of proof.

(Thereupon, out of the hearing of the jury, the following offer of proof was made:)

Mr. Sheppard: Defendant offers to prove by the plaintiff, who is now on the witness stand, just the amount of money which she has used of this five thousand dollars, and because defendant does not know the amount defendant requests permission to make this offer of proof by questions and answers to the witness outside the hearing of the jury.

The Court: As I recall this testimony, she made a tender, and it was refused.

Mr. Sheppard: Yes, sir. No question about it.

Mr. Hay: We object to it.

The Court: Sustained.



Mr. Sheppard: Will Your Honor permit us to ask these questions and answers for the purpose of showing how [fol. 392] much—we do not know. We can't put that in our offer. I mean out of the presence of the jury, just a proof, offer of proof.

The Court: Very well. I do not see the occasion of examining the witness out of the presence of the jury. I thought there were some questions you wanted to ask for the purpose of making your record.

Mr. Shepard: It is to show how much she spent.

Mr. Hay: Our point is that [—] is wholly immaterial, not in issue in this case.

Mr. Sheppard: I know it is, but our point is it is mighty material. We have a right to show how much she used and at what times.

The Court: If I sustain an objection I am not going to let you go ahead and develop the same facts after I have made a ruling.

Mr. Sheppard: I mean out of the hearing of the jury.

The Court: I don't care if it is out of the hearing of the jury or out of the hearing of the court. I do not think you are entitled to that. I do not think it is—there is testimony here that she made a tender and that you declined it, and I do not see that you have any right to show what she has done with the money after that.

Mr. Sheppard: I understand that perfectly, but we disagree [fol. 393] with you. I want to make our offer of proof, that is all, and we cannot state to you how much she spent, because we do not know.

Now, we want to ask her out of the presence of the jury and for the purpose of our proof, how much she spent, and how much she has left as part of the offer of proof, that is all.

Mr. Hay: I do not see how that could possibly affect their case. If they are entitled to show this, they are entitled whether they know the amount or do not know the amount.

Mr. Sheppard: The Court has already ruled whether we are entitled to show it. All we are asking is to get our proof in the record.

The Court: Are you objecting Mr. Hay?

Mr. Hay: I am.

The Court: Sustained.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

(Witness excused.)

Mr. Davis: Judge Reis, will you come around, please? [fol. 394] PAUL H. REIS, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, in sur-rebuttal, as follows:

#### Direct Examination.

By Mr. Davis:

Q. Judge Reis, won't you please state your name?

A. Paul H. Reis.

Q. What is your business?

A. I am the Judge of the Probate Court, St. Clair County, Illinois.

Q. And where do you live? A. Belleville.

Q. Belleville, Illinois? A. Yes, sir.

Q. Do you remember Mrs. Mary Stewart?

A. Well not—I have no independent recollection of Mrs. Stewart. I recall this particular administration over there.

Q. Well, do you remember when she came over there and presented a petition for a settlement?

A. I recall that she was there, yes.

Q. And do you remember whether or not she said to you that that settlement was not satisfactory, to you?

A. She did not say that to me.

Q. If she had said that to you, what would you have done?

A. Well, I would never have ordered her to sign an order for it, to compromise that claim. It is customary to ask—

[fol. 395] Mr. Hay: We object to that. It is purely argument.

The Court: Sustained.

To which ruling of the Court, the defendant, by its counsel then and there, at the time, duly excepted.

Q. But you recollect that she did not say to you that that, the settlement was not satisfactory?

A. Definitely I recall that.

Q. Did you ask her if she was satisfied with it or not?

A. It is customary to do that. I am quite sure I did.

Q. You have no independent recollection of asking her that, however?

A. No, I have no independent recollection, but it is the practice in compromising these claims to inquire whether or not they are satisfied with the settlement that is offered.

Mr. Davis: I think that is all.

#### Cross-Examination.

By Mr. Hay:

Q. Judge, as I understand, you have no independent recollection of that?

A. No, none.

Q. You have a lot of cases?

A. That is just the same as any other compromise.

Q. And do you recall, Judge, that at the time a gentleman had signed his name as her attorney, a Mr. Felsen, do you remember that?

A. I recall that Mr. Felsen was there.

[fol. 396] Q. Well. A. Signed.

Q. Assuming she was represented by an attorney, it would be natural for you to confer with the attorneys and understand that everything was agreed on?

A. That is right.

Q. And whether or not you had any talk with Mrs. Stewart herself, individually, you have no recollection at this time, have you?

A. No more than any other case, that is the usual procedure.

Q. That is the usual procedure?

A. Yes.

Mr. Hay: That is all.

## Redirect Examination.

By Mr. Davis:

Q. But you are sure that she did not say to you that the settlement was not satisfactory?

A. That I am positive of, yes.

## Recross Examination.

By Mr. Hay:

Q. Well, Judge, you are just proceeding on the theory that if she had said that you would not have gone on with it, how?

A. Well, it is customary to ask, and I am sure I would not have signed an order authorizing her to compromise [fol. 397] that claim if she had indicated that she was not satisfied with it.

Q. But where an attorney comes in representing her, you of course assume that everything is all right?

A. Well, the verified petition presented to me—

Q. Certainly, and you went ahead on that?

A. That is right.

Q. Understand, we are not suing you, Judge, for doing anything wrong. A. That is right.

Q. I just say, you just treated it as any other case; the sum and substance of it is you haven't any independent recollection of talking to her at all, have you?

A. No, not independent recollection.

Mr. Hay: That is all.

## Redirect Examination.

By Mr. Davis:

Q. Oh, was there then an Illinois attorney there representing her? A. Yes, sir.

Mr. Davis: That is all.

Mr. Hay: Now, I want to ask him—I had a question, but it is too mean. I won't ask it.

Mr. Davis: Go ahead.

Mr. Hay: That is all.

(Witness excused.)

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[fol. 398] LEONARD O. REINHARDT, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further, on behalf of the defendant, in sur-rebuttal, as follows:

Direct Examination.

By Mr. Davis:

Q. Mr. Reinhardt, what is your name, sir?

A. Leonard O. Reinhardt.

Q. And you are Clerk of the Probate Court of [the] St. Clair County, Illinois? A. Yes, sir.

Q. And you live in— A. East St. Louis, Illinois.

Q. East St. Louis, Illinois. Do you remember when Mrs. Stewart was there, at the settlement of this claim against the Southern Railway?

A. Yes, sir.

Q. Did you talk to her at that time? A. Yes, sir.

Q. Do you recall? A. Yes, sir.

Q. Did she make any complaint to you or say anything to you about not being satisfied with this settlement?

A. They just came, Mr. Wiechert and Mrs. Stewart came up to the counter, they were just up there for a minute. She signed her name. There was no conversation [fol. 399] took place at the counter, where the affidavit was taken, outside of the regular procedure of swearing her in.

Mr. Davis: That is all.

Cross-Examination.

By Mr. Hay:

Q. In other words, Mr. Wiechert just brought her up there and she signed, and that was all there was to it?

A. We have a table in front of this, in the outer office, and they discuss their affairs, and prepare their papers on this table, and after the papers are prepared, they bring them up to the table to be sworn to.

Mr. Hay: That is all.

A. Yes, sir.

Mr. Hay: That is all, sir.

Mr. Davis: May they be excused, those witnesses?

The Court: Have you any objection?

Mr. Hay: No objection.

The Court: Very well, they may be excused.

(Witness excused.)

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R. H. WIECHERT, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further, on behalf of the defendant, in sur-rebuttal, as follows:

[fol. 400] Direct Examination.

By Mr. Davis:

Q. Mr. Wiechert, won't you please state your name?

A. R. H. Wiechert.

Q. And what is your business? A. A lawyer.

Q. You are a member of the firm of Kramer, Campbell, Costello & Wiechert? A. Yes, sir.

Q. Were you present on the 30th day of November, 1937, November 30, 1937, when this settlement was made with Mrs. Stewart?

A. Yes, sir.

Q. And where did you first see her?

A. When she came to my office that morning about 9:30 or 10:00 o'clock.

Q. And what was done at that time? A. She—

Q. Who was with her, in other words?

A. She and Mrs. Hamm, her daughter, and Mrs. Hamm's husband came to the office.

Q. Now, just relate what took place there.

A. Well, when they came in, they seated them in the office, and we sat down to discuss this. There was no discussion as to any amount because we all assumed that they were settling for five thousand dollars, but the only discussion was with reference to taking care of any attorney fees that Mrs. Stewart might be liable to Mr. Noell for, and [fol. 401] that was our principal concern.

Q. Now, what was said about that?

A. Well, I told her or told the parties in the room that I did not think she would be liable for any attorney fees that Mr. Noell might claim, because at that time he was not permitted to practice law in the State Courts of Missouri,

and he was not admitted to practice in Illinois, but that we would take care of any attorney fees that she might be legally liable for in any claim that Mr. Noell might make against her for attorney fees, and assured her that the five thousand dollars would be free and clear to her.

Q. Now, did she want you to put that in writing?

A. She did want me to put that in writing and I told her that we would not do that, that she had to take our word that we would live up to that promise.

By the Court:

Q. What was the objection to putting it in writing, Mr. Wiechert?

A. Well, we did not want Mr. Noell to get hold of anything of that kind. That was the principal reason.

Q. Now, what else was said there?

A. Well, that was the principal discussion, and after they were in the office awhile, I called Mr. Haun in, for him to assure them of the same thing that I had assured [fol. 402] them of, and then it came after they agreed on the settlement on that basis, that they took our word for that, then we told them that this had to be approved by the Probate Court, that we insisted on that, and told them that they would have to be represented by counsel, Illinois counsel, that if they had anybody in mind they should suggest such counsel, if they did not we suggested Mr. Felsen, who has offices in the same building that we have, and finally Mrs. Stewart agreed to that.

Q. Agreed to Mr. Felsen?

A. Agreed to Mr. Felsen, and then Mr. Felsen was called into the office.

Q. Now then, what did you do?

A. Then Mr. Felsen read over the papers, read them out loud. There were several papers there, petition, release and a check and so forth, and read them all out to all the parties in the room. Then after he got through, Mrs. Stewart read them over individually. She took a little time in reading over each paper that I had prepared.

Q. And then after that what was, after that was done, what did you do?

A. Then we went over to Belleville in my machine, and we got over there during the noon hour, from 12:00 to 1:00, and the Probate Judge was not there, and I invited them

to a lunch, that is Mr. Haun was not, that is, just Mr. Felsen [fol. 403] sen and Mr. and Mrs. Hamm, Mrs. Stewart and myself. Then, after lunch, we went into the Probate Clerk's office and the papers were, that is the petition to the Probate Court was handed to Mrs. Stewart, and she again glanced over it or read it, and then she went up to the counter of the Probate Clerk's office and subscribed to it in the two places where she had to subscribe to that and swear to it. Then we went into the court room and Mr. Felsen presented it to the Judge there, and he approved the order that had been prepared.

Q. And then after that, then what did you do?

A. Then after that we left the court room, went back to the Clerk's office, and the release was presented to Mrs. Stewart and she read that again, and she finally signed it, and the check was handed over to her for the \$5,150, payable to her and Mr. Felsen.

Q. Did she take it back to Illinois, I mean did you take her back to East St. Louis?

A. Took her back to East St. Louis, and she asked me to let her off at the Southern Illinois National Bank, and I took her down there, and she and Mr. Felsen and Mr. Hamm went into the bank. Mrs. Hamm and I stayed out in the car. When they transacted their business and come out they got back into the machine, and I asked them where I [fol. 404] I could take them to, and they told me to take them up to Missouri Avenue near Collinsville, and let them off there, which I did.

Q. Then they came into your office afterwards and tendered you the money?

A. Yes. About a week later they came into the office and tendered back the money.

Q. Which you refused to accept?

A. Which I refused to accept.

Q. Now, was anything said about them—was anything said about they could accept it or not, or money?

A. Yes. In the course of the conversation Mrs. Stewart said well, she would not settle unless we put that down in writing, about the attorney fees, and Mr. Haun told her said, well, you do not have to settle, that is up to you whether you want to settle or not. If you settle this you have got five thousand dollars. If you do not settle



it, and the case is tried, you might not get anything, and you might get more, or words to that effect.

Q. That is as near as you can recollect it? A. Yes.

Q. Now, was anything said about Mr. Hamm's job?

A. Absolutely not.

Q. Did Mrs. Hamm say to you it did not seem fair "to bring my husband in it and his job in it"?

[fol. 405] A. She did not.

Q. And did you say "it could be done and it had been done"?

A. I did not say anything to that effect, and there was no conversation about anybody's job.

Q. Did you have any conversation either with Mr. Hamm or Mrs. Hamm, or Mrs. Stewart about his job?

A. Absolutely not.

Q. Do you remember whether the Judge in the Probate Court asked Mrs. Stewart whether she was satisfied with the settlement or not?

A. Yes. I do remember that we were sitting at a table in front of the Judge's desk, and he just asked her if she was satisfied with the settlement, and she said yes, and then he signed the order.

Q. Did anything else happen over there that you know of? A. In the Probate Court?

Q. Yes, sir. A. No, sir.

Q. Why did you refuse to deal with Mr. Noell, Mr. Wiechert?

A. Well, he was suspended from the practice in the State Courts of Missouri. He was not an Illinois lawyer, never had been admitted to practice in Illinois.

Q. And that is the reason that you—

A. Oh, there were a lot of other reasons, too. We had had previous experience with Mr. Noell.

[fol. 406] Q. In what respect?

A. In chasing cases.

Q. And other things? A. Yes, sir.

Q. Now, what were some of those other things?

A. Well, I am only speaking of knowledge that I gained from others.

Q. Well, there were—well, then.

Mr. Hay: Other railroad lawyers, I presume?

The Witness: And other lawyers, too.

Mr. Hay: Yes, some of your kind.

Mr. Sheppard: Your Honor, I think that is uncalled for entirely.

Mr. Davis: Mr. Hay is talking about his own kind.

The Court: Yes. We won't have any personalities here. I won't tolerate it.

Mr. Hay: Is that all?

Mr. Davis: That is all.

### Cross-Examination.

By Mr. Hay:

Q. So the lady that you were dealing with was this lady back here, whose lawyer, according to your statement, was not at that time entitled to pursue the case?

A. I did not say that.

Q. But you would not deal with her lawyer?

A. I would not deal with her lawyer.

[fol. 407] Q. And what you did was to pick a lawyer for her?

A. For the purpose of having the settlement approved in the Probate Court.

Q. Yes, for the purpose of putting over the settlement that you and the claim agents had been able to work out?

A. Oh, absolutely not, Mr. Hay, we were not putting anything over.

Q. How long have you been practicing law?

A. Since 1914.

Q. You have been over in East St. Louis, haven't you?

A. Yes, sir.

Q. Do you know that there are a lot of boys working for the railroad over there, you do, don't you?

A. Yes, that is true.

Q. You knew that you were dealing with a little woman, with whose lawyer you would not deal, whose son-in-law had been called in to the Legal, into the Law Office of the Terminal Railroad, and urged to use his influence with his mother-in-law to settle the case, didn't you?

A. Well, I did not know anything about urging or using influence to settle.

Q. You knew that this boy, this young man working for the Terminal Railroad, and who wanted to hold his job with

the Terminal Railroad, had been called into the office of [fol. 408] the attorney for the Terminal Railroad to talk about that case, didn't you?

A. I knew that he had been in to see Mr. Howell, yes, sir.

Q. And you were willing, as a lawyer, to go on and consummate a settlement that had been brought about under those circumstances?

A. Now, what circumstances are you speaking of?

Q. I am talking about the circumstance of the lawyer head of the Terminal Railroad Company, calling a humble workman into his office to talk to him.

A. I do not think that is anything unusual.

Q. You do not? A. No.

Q. There is no use for you and me to argue about as fundamental thing as that.

Mr. Davis: Let Mr. Hay ask questions. We object to that. Let Mr. Hay ask questions.

The Court: Certainly.

Q. Don't you know, as a lawyer, as a man who knows something about human nature and the effect of a movement on the part of a superior upon one in an inferior relation, that there was just one inevitable consequence of Howell's calling this boy into that office?

Mr. Davis: Now, we object to that, Your Honor. How could he know that?

[fol. 409] Mr. Hay: I am asking his knowledge of human nature.

Mr. Sheppard: It is argumentative.

Mr. Davis: Yes, it is argumentative.

Mr. Hay: This is cross-examination.

Mr. Davis: I know it is cross-examination, still it is argumentative.

The Court: Sustained.

Q. You are attorney for the Southern Railroad?

A. Yes, sir.

Q. This gentleman is attorney for the Southern Railroad? A. Yes, sir.

Q. And the representative of your railroad, goes to the head of the Legal Department of the Terminal to get him to call Henry Hamm in and talk to him about this case, and you think that was not calculated to make an impression upon young Hamm?

Mr. Davis: Now, we object to that, Your Honor.

The Court: This is cross-examination.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Do you?

A. Mr. Hay, under the circumstances, from the information that we knew at that time, it was Mr. Hamm alone that was blocking this settlement.

Q. Just answer my question. My question is—  
[fol. 410] A. I did answer your question.

Mr. Hay: No, you haven't. I beg your pardon.

The Court: Read the question.

(Question read.)

A. Absolutely not, in this day and age when a workman for a railroad is a member of the Brotherhood, that would have no effect at all on him to be called in by a member of the Legal Department of any railroad. He knows his job is secure.

Q. Well, he knows and you know that if a railroad company is determined to get rid of a man, that many things can be found wrong with his work against which it is impossible to defend under the rules?

A. Oh, absolutely not, Mr. Hay.

Q. Well, I know that.

A. Well, they can appeal to the Railroad Labor Board.

Mr. Davis: We object to that.

Mr. Sheppard: We object to that.

The Court: Counsel is making an objection. You know enough to stop.

Mr. Davis: We object to that, to Mr. Hay testifying.

The Court: Sustained.



Q. Go back just a moment. So, you went on with this settlement, you knew, did you not, that Mrs. Stewart, from [fol. 411] the time Joe Howell called her, called Hamm into the office, up to the time she appeared in your office, had never had the advice of a disinterested lawyer representing her, didn't you?

A. I do not know about that.

Q. Well, she did not appear there with any lawyer at all, did she?

A. No, she did not appear in my office with any lawyer.

Q. And the only lawyer that participated was the lawyer who was brought in at your instance, and who was paid by the Southern Railroad Company, that is true; isn't it?

A. With the consent of Mrs. Stewart.

Q. Oh, certainly.

A. She agreed to it or I would have never called Mr. Felsen in.

Q. You say that the reason you would not deal with Mr. Noell was because he had been suspended from practicing in the State Court? A. Yes, sir.

Q. Did you or did you not know that he had not then been and never has been sustained from practice in the Federal Court?

A. I think you are mistaken about that. If I remember correctly, he was suspended in the Federal Court, and on appeal that was set aside.

Q. And the Appellate Court held that the order suspending him in the State Court was void, didn't they? [fol. 412] A. I do not know anything about that.

Mr. Davis: No. They held no such thing and they could not hold it, because that is still in force, and Mr. Noell does not practice in the State Court today.

Mr. Hay: Well, we will offer that in evidence.

The Court: If counsel will quit testifying, and would like to have the Court testify the Court will tell what the facts are.

Mr. Davis: Well, we will let the Court testify.

The Court: Well, counsel should quit testifying and let the witnesses testify.

Q. Now, the sum and substance of it all is that you dealt with a client of Mr. Noell's upon the ground that you would not deal with him, and who was not represented by any other lawyer, that is true, isn't it?

A. Yes. May I add something further. Mrs. Stewart—

Q. No, I don't care—

A. Also told us she wanted to get rid of Mr. Noell.

Q. That was after you and Howell and Hann had operated on her, wasn't it?

A. That was on November 30th, when she was in my office.

Q. Yes. Are you a member of the Bar Association?

A. Yes, sir, I am a member of the American Bar Association, of the Illinois State Bar Association and the [fol. 413] East St. Louis Bar Association.

Q. And in the face of that you went on and consummated a settlement with a woman whose son-in-law had been called in to the office of the head of the Terminal Railroad, for which company he worked, and who was inevitably concerned about his job, and carried out that settlement, is that true?

Mr. Sheppard: We object to that, Your Honor, because that is not a question, that is an argument to the jury.

Mr. Hay: I am asking him if that is true.

Mr. Sheppard: Just a minute. Pardon me.

The Court: Let counsel make his objection.

Mr. Sheppard: And for the further objection, on the further ground rather, that it is wholly argumentative and is not for the purpose of eliciting any testimony in this case relative to any of the issues in it.

The Court: Sustained.

Q. Did you know that this case was set for trial on the 8th of December, just a week after you made this settlement?

A. I knew it was a short time after this settlement was made, yes.

Q. And did you also know that Mr. Noell was to try that case in this court? A. Yes, sir.

Q. And that he had the right to try it in this court?  
[fol. 414] A. I presume he did.

Q. Did you tell Mrs. Stewart that?

A. Oh, I presume that she knew it.

Q. You did tell her that you would not agree to pay Noell's fee, because he had been suspended in the State Court, didn't you know that if he was entitled to practice in this court that he would be entitled to his fee in the case?

A. He would not be entitled to an attorney's lien under the State law.

Q. So you were willing to take advantage of that situation, refuse to give a written agreement for fear Noell might get hold of it and protect himself?

A. What do you mean by protect himself?

Q. You said you did not want to give a written agreement because you were afraid Mr. Noell would get hold of it, didn't you? A. Yes.

Q. In other words, you were afraid that Mr. Noell might thereby be in a better position to protect himself?

A. We thought it—I thought it might be an admission to put something in writing, that the Southern Railroad Company was liable for attorney fees to Mr. Noell, which they were not.

Q. That if you did not do that you might be able to beat [fol. 415] him out of his fee, that is what you thought, wasn't it?

A. If, he would have to establish his fee in a court of law, yes, and we did not think he could.

Q. And you thought you would beat him out of it, didn't you? A. Oh, I would not say that.

Q. And that is what you wanted to do, wasn't it?

A. I would not say that.

Q. Well, I will give you plenty of time to think over what you would say.

That is all.

Mr. Davis: That is all.

(Witness excused.)

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ARTHUR R. FELSEN, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, in sur-rebuttal, as follows:

## Direct Examination.

By Mr. Davis:

Q. Mr. Felsen, won't you please state your name?

A. Arthur R. Felsen.

Q. And where do you live?

A. 705 Alhambra Court, East St. Louis, Illinois.

Q. And what is your profession?

A. Attorney-at-law.

[fol. 416] Q. And where do you practice?

A. East St. Louis, St. Clair County and adjoining counties, and the Federal Court in our district, before the Interstate Commerce Commission, various Commissions of the State of Illinois.

Q. Have you ever been an officer of any Bar Association?

A. Yes, I have been president of the East St. Louis Bar Association.

Q. President of the East St. Louis Bar Association. Were you ever nominated for any office?

A. Yes, for Circuit Judge of our District on the Republican ticket.

Q. You were not elected, the other day?

A. No, sir.

Q. Do you know Mrs. Stewart?

A. I have met Mrs. Stewart twice.

Q. And where did you first meet her?

A. At her home with a Mrs. Viola Couch, whom I was representing at that time in a suit against the Southern because of loss of her husband, who was also a switchman, I believe, and worked with Mr. Stewart at one time.

Q. You mean Mr. Couch?

A. Mr. Couch was also a switchman and worked with Mr. Stewart. Mrs. Couch took me out to Mrs. Stewart's house.

Q. Now, on November 30th, did you meet Mrs. Stewart?  
[fol. 417] A. I did.

Q. Where? A. In Roland Wiechert's office.

Q. How did you happen to go there?

A. Oh, maybe a day or two previous to the date I went there, which I believe was the 30th, from the testimony I just heard, I don't remember that date.

Q. The 30th of November, 1937?



A. That is right. I believe it was Bruce Campbell asked me if I would, as attorney for Mrs. Stewart, file a petition to have a settlement approved in the Probate Court, and to handle the approval of the same, and I told him I would if Mrs. Stewart desired me to do it, that I would be glad to, and told him what I would consider should be paid me for doing it, and he said well, that Mrs. Stewart was coming in, and that if they wanted me to handle the matter, she wanted me to, why they would call me. So on the morning of the 30th, Roland Wiechert called me and told me to come up to his office. My office is on the third floor of the same building [is he] in. His office is on the sixth floor.

Q. And when you got in there, do you remember the conversations that were had?

A. Well, there was probably several conversations, I can't remember the exact wording. I know that Mrs. [fol. 418] Stewart was present when I got there. Roland Wiechert was there. I was introduced to her daughter and son-in-law, Mr. and Mrs. Hamm. I believe Haun, claim agent for the Southern was there. I believe that is all that was there at the time, and I asked Mrs. Stewart if she wanted me to represent her in handling the settlement in the matter, and she said yes, and I know that we, the petition and order and voucher were all there prepared, I did not prepare any papers, they were all prepared, but I did read them over, read everything over out loud to Mrs. Stewart and Mr. and Mrs. Hamm, and I believe they, I believe Mrs. Stewart read them over herself in the office there after I finished, although I do not know that she read everything over.

Q. How long were you in the office?

A. Oh, I would say an hour, possibly. I would not know exactly, probably an hour or so.

Q. Then after that—now, in the office, while you were there, was anything said about Mr. Hamm losing his job?

A. Not while I was in the office. The only conversation that I recall, there was much about, was relative to attorney fees for Mr. Noell, and whether the Southern Railroad would protect Mrs. Stewart in the event Mr. Noell made a claim against her.

[fol. 419] Q. And what was said about that?

A. The statement was made by either Mr. Haun or Mr. Wiechert, or maybe both of them, that they would not put that in writing, I recall that part of it, but that they would absolutely protect her in the event she had to pay any attorney fee to Mr. Noell, they would reimburse her. Now, I do not, can't recall the whole conversation. It has been a year and a half ago.

Q. Mrs. Hamlin, I think you said that she said in your presence to Mr. Wiechert, that it did not seem fair to "bring my husband in it and his job in it", that Mr. Wiechert replied, "it could be done and it had been done".

A. Well, if that conversation took place I do not believe it was in my presence, at least I do not recall it. I have no recollection of that having been said there.

Q. Have you any recollection of Mr. Hamm's job being brought into the conversation in any way, that is, that if they did not settle that he would lose his job?

A. Not while I was there, I have no recollection of it, at least.

Q. Would you say that it happened?

A. No, I would say that it did not happen in my presence. I would not say it did not happen up there that morning, but I do not think it happened in my presence.

[fol. 420] Q. You have no recollection of it?

A. I have no recollection of it at all.

Q. You have a recollection of the conversation that they would protect Mrs. Stewart from any attorney fees that Mr. Noell might have?

A. Yes. I have an absolute recollection of that.

Q. Do you hold any office?

A. I have been United States Commissioner in the Eastern District of Illinois since November, 1926.

Q. Now, you went over to the Probate Court with Mrs. Stewart, did you? A. I did.

Q. And when you got over there, did you handle the proceedings for Mrs. Stewart? A. I did.

Q. Did you go up with her to the Clerk to have her sign it and make an affidavit? A. I did.

Q. Now did—I will ask you if Mrs. Stewart ever said to you at any time there that the settlement was not satisfactory to her? A. No, sir, she did not.

Q. Did she ever say that either in Mr. Wiechert's office or in the Probate Court?

A. She did not say it in my presence. I say, she might have said it some other time, but she did not say it in my [fol. 421]-presence.

Mr. Davis: I think that is all.

Cross-Examination.

By Mr. Hay:

Q. When you were called into this case, it was after the negotiations for the settlement had been carried out, that is true, isn't it?

A. I think that is right, sir.

Q. You were called in by Mr. Campbell or Mr. Wiechert?

A. One of the two, one of the two of them spoke to me, a day or two before, I am not certain which.

Q. And your fee was paid by the Southern Railroad?

A. My fee was included in the same voucher.

Q. Yes. A. That is right, paid by them.

Q. And what you did was to help carry out the formalities of the settlement, that is true, isn't it?

A. Well, I guess you could call it that. I presented it to the Probate Court, and of course would have closed, if there had been anything additional in closing the estate I would have done that for that same fee.

Q. But so far as negotiating the settlement was concerned, you had nothing to do with that?

A. Absolutely nothing.

Q. You did not undertake to advise Mrs. Stewart one [fol. 422]-way or the other as to whether she should make the settlement or not, did you?

A. No, sir, I did not.

Q. And at the time you knew that Mr. Noell was her lawyer? A. Yes, I believe I did.

Q. Yes. And did you know also that the case was set for trial in about a week?

A. I do not know whether I did or not, Mr. Hay. I might of, or I might not of.

Q. Judge Davis asked you a while ago whether or not she said that the settlement was not satisfactory to her. You testified in the hearing before Judge Moore on the motion to reinstate this case on the docket, did you not?

A. That is right.

Q. I will ask you to refresh your memory, if at that time this question was asked and this answer given:

"Did she say at any time that she did not desire to settle?"

"A. There was some talk about the settlement but I do not remember her saying she did not want to settle. She did not appear very anxious and still it seems she wanted to settle."

Is that about right?

A. I think it is, yes, sir.

[fol. 423] Q. That is about right?

A. You understand, this has been a year and a half ago since I was in the room here, and I—

Q. Then again:

"The Witness: No, outside of the general impression that she seemed to want to settle it and did not want to settle it, I do not know. She did not appear to object, and after we got up to the Probate Court, there was no objection made by her at all, that I know of."

That is about in accordance with your recollection, isn't it?

A. I think it is, yes, sir.

Q. She seemed somewhat uncertain about it, didn't she?

A. No, it is kind of hard to explain. It appeared to me, as I now recall it, that she was greatly agitated over whether or not she did settle she would not have to pay an attorney fee out of her five thousand dollars.

Q. Now, when you were representing her, I believe you stated here. A. That is right.

Q. In the negotiation, and when she requested that this agreement of the railroad be put in writing, didn't you, as her lawyer, insist that that be done?

A. I asked them to put it in writing, yes, sir, and they [fol. 424] refused to do it before we ever went to Belleville.

Q. I see. You are, of course, on friendly terms with Mr. Campbell, Mr. Wiechert?

A. I am on friendly terms with probably 185 lawyers in St. Clair County, Mr. Hay, which is all of them.

Q. And your office is right close by?



A. We are in the same building with probably thirty or forty other lawyers in the building.

Mr. Hay: I see. That is all.

Redirect Examination.

By Mr. Davis:

Q. Have you ever known Bruce Campbell to break his word?

Mr. Hay: I object to that.

The Court: Sustained.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

The Witness: Is that all?

Mr. Davis: May Mr. Felsen be excused?

The Court: Is there any objection to Mr. Felsen being excused?

Mr. Hay: No.

Mr. Noell: No.

(Witness excused.)

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[fol. 425] BRUCE A. CAMPBELL, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, in sur-rebuttal, as follows:

Direct Examination.

By Mr. Davis:

Q. Mr. Campbell, won't you please state your name?

A. Bruce A. Campbell.

Q. And of what firm are you a member?

A. I am a member of the firm of Kramer, Campbell, Costello & Wiechert.

Q. Where do you live?

A. I live in Belleville, Illinois. My office, however, is in East St. Louis, Illinois.

Q. And you practice at East St. Louis, Illinois and in Missouri, also, do you?

A. Well, I sometimes—I do practice in Illinois generally; and I sometimes practice in Missouri in connection with Missouri lawyers.

Q. Now, your firm had charge of this case of Stewart vs. the Southern Railway Company, did you not?

A. Yes, sir.

Q. And when was the first time that you knew anything about it, I mean about the settlement?

A. Well, I knew generally that Mr. Haun was trying [fol. 426] to settle the case. I had one conversation with Mr. Hamm, the son-in-law of Mrs. Stewart; and one very short conversation with Mrs. Hamm. Those are the only conversations I had outside of with members of my own firm, and with Mr. Haun. I never knew Mrs. Stewart until long after this litigation started.

Q. You knew Judge Howell, did you not?

A. Intimately for about forty-eight years. I knew him when we lived in the country together, neighboring counties.

Q. Down in Southern Illinois? A. Yes, sir.

Q. Now, did Judge Howell telephone you on the latter part of November, 1937?

A. I could not give the exact date. My recollection is it was sometime in November, 1937, I received a telephone call from Mr. Howell in which he stated to me that he had had a conversation with Mr. Hamm, that some question had arisen in their conversation about the settlement of attorney fees, that he had told Mr. Hamm that he could come over and see me, and that anything I told him would be carried out, that was what Mr. Howell told me. That was the first time I ever knew that Mr. Howell had had a conversation or was going to have a conversation with Mr. Hamm or anyone else connected with this matter.

In a little while Mr. Hamm appeared and came into my [fol. 427] office. I talked with him and he stated to me that what they were worried about was whether they would be liable to any attorney fees in case they settled the case. I told Mr. Hamm that the first question for them to determine, Mrs. Stewart and the family, was whether or not they were willing to accept five thousand dollars in settlement of the case. Mr. Hamm stated in reply to that, that that is all they had wanted at any time, provided it came clear to them, free and clear of attorney fees.

He then spoke of the fact that they were worried about the possibility of being compelled to pay attorney fees to

Mr. Noell if the case were settled, and that they wanted to be assured that that would be paid. I told him that we would guarantee Mrs. Stewart that if she was legally compelled to pay any attorney fees to Mr. Noell, that the Southern Railway Company would reimburse her for that amount provided we were given the privilege of defending any legal liability for such attorney fees either in the Probate Court or otherwise. He said that that was fairly satisfactory, and we then got in some general conversation, I had thought that I had known his father in the old days, and we talked it over. He concluded that probably we did, and engaged in general conversation, and he left the office. [fol. 428] That is the only time that I ever had any conversation with anybody connected with the plaintiff's side of this case, or any of the Stewart family with the exception of the short conversation that I had some time later with Mrs. Hamm, and that was an occasion when I went up in the front part of the office where the stenographers are, and there was a lady there whom I did not know. She said she was Mrs. Hamm. She had a telegram, or spoke of a telegram, now I am not sure whether she showed me the telegram or whether she told me about it, but at any rate, I learned from her that she, that her mother, Mrs. Stewart, had a telegram from Mr. Haun, from somewhere outside of East St. Louis, asking her to meet her that day in his office, which is in the same building that mine is, and she asked me if it would make any difference if she came to see him at some other time. I told her that I was sure it would not, and she arranged to come back at some time, at some future day, I think the next day, I would not be sure about that, and I told her I would leave a note on Mr. Haun's desk in his office as to when Mrs. Stewart would return.

Those were the extent of my conversations with any of these people.

[fol. 429] Q. Mr. Campbell, in your conversation with Judge Howell, was anything mentioned about Mr. Hamm losing his job if he did not bring Mrs. Stewart to the office, or if she did not settle?

A. Absolutely nothing of that kind was mentioned by Judge Howell, or suggested by him or by me.

Q. Now, in your conversation with Mr. Hamm, when he came over to the office, did he mention or did you mention anything about losing his job?

A. Not a word of that was mentioned by him nor by me, nor would I mention such a thing to any employee of any company.

Q. Now, was anything said to him, to Mr. Hamm, by you or by Mr. Hamm, did Mr. Hamm say to you, "It did not seem fair to bring him into it", and that he could lose his job, and it had been done?

A. Not a word of that kind about loss of a job. There was one further thing said by Mr. Hamm, that I overlooked a while ago. He did say that whatever sum that Mrs. Stewart, that the family wanted her to have all of it, without the children getting any of it, and I told him that I felt sure that that could be arranged if they all went into the Probate Court and asked that the full amount of it be apportioned to Mrs. Stewart and none to the children, that if [fol. 430] they consented to it I felt sure that the Court would grant such an order.

Mr. Davis: That is all.

#### Cross-Examination.

By Mr. Hay:

Q. Mr. Campbell, it is true, is it not, under the Federal Employers Liability Act, there being no minors, all of the money would go to the widow, would it not?

A. Well, I am not so sure about that, Mr. Hay. I would not want to enter into a discussion of the law. I think that any court under such circumstances, where the adult children did not have any support from the deceased, that probably any court would so apportion it. But, as I remember the statute, it provides for, that it be for the benefit of the—

Q. Widow and minor children?

A. Widow and children.

Q. That is minor children?

A. Does it say minor children?

Q. Yes.

A. I do not remember as to what it said.

Q. I think that is the situation.

A. I am not sure about that. An examination of the statute would disclose it.



Q. You were not present the day this settlement was finally consummated?

A. I was not.

[fol. 431] Q. I believe you represent the Terminal as well as the Southern Railroad?

A. Well, yes. We are attorneys in Illinois for the Terminal, at that time, under Mr. Pierce, and Mr. Howell. At this time under Mr. Pierce and others connected with the company, legal representatives in Illinois.

Q. You represent some other railroads also?

A. Oh, yes.

Mr. Hay: That is all.

Mr. Davis: That is all.

(Witness excused.)

H. B. HAUN, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further, on behalf of the defendant, in sur-rebuttal, as follows:

#### Direct Examination.

By Mr. Davis:

Q. Mr. Haun, won't you please state your name?

A. H. B. Haun.

Q. And where do you live?

A. In Webster Groves, Missouri.

Q. And your business is Assistant General Claim Agent for the Southern Railway Company?

[fol. 432] A. Yes, sir.

Q. And where is your office?

A. 619 First National Bank Building, East St. Louis, Illinois.

Q. Now, Mr. Haun, do you remember the time that Mr. Stewart died? A. Yes, sir.

Q. And after his death, did you go to see Mrs. Stewart?

A. Yes, sir.

Q. How soon after his death?

A. Oh, probably a week or so, Mr. Davis. I can't remember, I can't be positive as to the exact time.

Q. And where did you see her?

A. She was at the home of her daughter, Mrs. Hamm, on Gaty Avenue in East St. Louis.

Q. And what was said at that conversation?

A. Well, that was a visit, the purpose of that visit was more or less to get acquainted with Mrs. Stewart, because I realized we had business to transact with her later on, at a time to be determined by her, just part of a routine meeting with the party with whom I was going to have to do business.

Q. Now, when did you next see Mrs. Stewart?

A. Well, I can't tell you that. It was the next few weeks, I would say, after that.

Q. And what was the purport of that conversation?

[fol. 433] A. To enter into negotiations for the settlement of this claim.

Q. And what did you say to her?

A. That would be awful hard for me to say, Mr. Davis. Everything that was said; nothing formal about it. There was a lot of interruptions, people from across the street came in, sit, talked a while, get up and leave; whether or not there was any offer of settlement made at that time or not I would not say.

Q. Now, when did you next see Mrs. Stewart?

A. As I recall, the next time I went to see Mrs. Stewart was the day that some of her relatives from Coulterville had come up to get her to go down to the country with her.

Q. Do you remember when that was?

A. Well, it was in April, sometime following this accident in February.

Q. Did you see her at that time?

A. Yes, sir, but not to say much to her. She was just almost ready to leave, the car was there waiting on her, and she was making the final preparations to leave home, to go down to the country.

Q. To go down to Coulterville?

A. Yes, sir.

Q. And did she tell you she was going to Coulterville?

[fol. 434] A. Either she or Mrs. Hamm told me. I have forgotten which. I think maybe Mrs. Hamm told me that.

Q. Did she tell you where she was going?

A. Yes, sir, told me the names of people she was going to be visiting.

Q. She told you the names of people she was going to be visiting? A. Yes, sir.

Q. Do you remember what day of April that was?

A. No, sir, I do not. It was sometime prior to the 20th, however.

Q. And how long prior to the 20th?

A. Oh, I would say within a week.

Q. Now, when was the next time that you saw Mrs. Stewart?

A. On the 20th day of April, 1937.

Q. On the 20th day of April, and where did you see her?

A. At Coulterville.

Q. At whose home was she?

A. At this lady who testified here Saturday, Mrs. McKelvey, I believe is the name.

Q. The lady that testified "you had better not"?

A. That is the lady, yes, sir.

Q. Now, did you go to Mrs. McKelvey's home?

A. Yes, sir.

Q. And did you get into the house? A. Yes, sir.

Q. And did you—what happened there after you got in the house?

[fol. 435] A. Why, as I recall, Mrs. McKelvey is the lady who answered the door, and I told her my name, and told her I wanted to see Mrs. Stewart if she was there, and I was told she was there, and presently Mrs. Stewart showed up, at which time I invited her to go out in the automobile where we could talk privately about a matter that I regarded concerned no one but she and myself, and she went.

Q. And she went? A. Willingly.

Q. And then did you talk about this case?

A. That is all we talked about, for almost three hours.

Q. What was the purport of your conversation?

A. Well, we agreed on the settlement for four thousand dollars. She told me she had been appointed administratrix. I told her I had authority from the company to pay her four thousand dollars, and the only reason the papers were not signed right then and there, she had left her letters of administration, I think she said, in the sewing machine drawer in East St. Louis, on the Gaty Avenue address. That is the only reason the case was not closed then and there with Mrs. Stewart.

Q. And you would not settle unless you knew that she had been appointed administratrix?

A. I did not question that, but I am not allowed to draw a draft until I can make it correspond with the name on

[fol. 436] the letters of administration. It has to be letter perfect with those on the letters of administration.

Q. Let me ask you this question: Did you know at that time whether it had, whether suit had been filed?

A. No, sir.

Q. Do you know whether it had been filed or not?

A. No, sir, I do not.

Q. What was the date of its filing?

A. I learned it the next day, however, filed later.

Q. This is on the face of it, and it shows that suit was filed on April 20th.

A. Then, I learned the following day that suit had been filed. I did not know it that day.

Q. You did not know it at that time?

A. No, sir.

Q. And you and Mrs. Stewart agreed upon a settlement that day?

A. Yes, sir.

Q. Now, did you know that she had an attorney?

A. No, sir.

Q. Did she tell you that she had an attorney?

A. No, sir.

Q. Then what did you do—how long were you in that automobile?

A. Oh, probably two or three hours, Mr. Davis, most of the afternoon. As I recall I got down there shortly after [fol. 437] lunch, and I know I got back to Belleville that afternoon, just in time to get a certified copy of that letter before the Probate Court Clerk's office closed, which I think is 5:00 o'clock, and it is probably forty or fifty miles down there.

Q. To Coulterville? A. Yes, sir.

Q. And you did get a certified copy of it that day, did you?

A. Yes, sir, that same day, and agreed to meet her at 9:00 o'clock the next morning and close the matter out at Mrs. McKelvey's.

Q. Did you meet her the next morning?

A. Yes. I went to McKelvey's, she was not there. She was at another relative two or three blocks away. I went over there, as I recall Mrs. McKelvey went over to show me where she could be found, and Mrs. Stewart was in bed at this other address, I have forgotten the name of the



people, and she told me she was nervous and not feeling well and did not care to discuss it. I told her that would be all right, I would see her later, and I left. I was not in the house much longer than it would take me to tell about it.

Q. Just a few minutes? A. That is all.

Q. And then what happened?

A. Well, when I learned, the first knowledge I had of [fol. 438] the suit was between Coulterville and Belleville, stopped in the filling station and got some gasoline and a cup of coffee, Coca-Cola or something of that nature, and while in this cafe, which was run by the same man who operated the pumps out there, I saw a current, or a morning Globe daily newspaper here, where I noticed the filing of this suit. That was on the 21st day of April, 1937.

Q. Now, then, when was the next time you saw Mrs. Stewart?

A. Well, I did not see Mrs. Stewart any more, to speak to her, I do not think until the 30th day of November, whatever day it was the settlement was consummated over there, following this April.

Q. And on the 30th day of November, where did you see her?

A. It was in Mr. Wiechert's office in the same building in which my office is located.

Q. And when you saw her, how did you happen to get into Mr. Wiechert's office?

A. Well, in the meantime, between this time I saw her in Coulterville, and then on this date, I had learned that Mr. Hamm was the, as we say, "the nigger in the woodpile" down South, was blocking this settlement.

I learned that through an informant of mine who had talked to Mrs. Stewart's son, who is a waiter at the Coronado [fol. 439] Hotel, and it was then that I went and called on Mr. Howell and said this to Mr. Howell, I said, "Mr. Howell, we oftentimes have cases where we have our own employees who are blocking these settlements. Here we have a case where we know that is what has happened, and I wish you would talk to Mr. Hamm about that."

Q. What did you tell him?

A. Just what I told you.

Q. To talk to Mr. Hamm about it. Did you tell him anything about having information that Mrs. Stewart wanted to settle for five thousand dollars?

A. Oh, yes. I told him she wanted her money and was willing to settle for that.

Q. How did you get that information?

A. Through this same informant.

Mr. Hay: Who was it?

A. Mrs. Stewart's son, a waiter at the Coronado Hotel. He said his mother is wanting to settle it.

Mr. Hay: Just a moment. Did you hear him say that?

A. No.

Mr. Hay: I move that be stricken out.

The Court: Sustained.

To which ruling of the Court, the defendant, by its counsel [fol. 440] set, then and there, at the time, duly excepted.

Q. I am asking for the conversation with Judge Howell. Did you tell Judge Howell in that conversation, that the thing that was blocking Mrs. Stewart was the fact that they were afraid of the attorney fees, that they might have to pay Mr. Noell?

A. No, I do not recall that. I just told him Hamm was blocking the settlement, that is the way I recall it.

Q. Hamm was blocking the settlement?

A. Yes, sir. I told him that was my information.

Q. Now, then afterwards you made—and when was that, if you know, that you saw Judge Howell?

A. No, I do not. It must have been—I am guessing now, I would say around the 1st of November, something near that date.

Q. And then what after that, what happened?

A. Well, I do not know. In the next ten days or some such matter as that, Mr. Campbell came to my office one day and told me that Mr. Hamm had been over to see him in connection with it, and he said that Mr. Hamm had told him yes, they were perfectly—

Mr. Hay: I object to what he said Mr. Hamm told him.

Q. Anyway, you found out information that—then, did you send a telegram to Mr. Hamm?

A. Yes, sir. I first learned that that was the date con-[fol. 441] venient for Mr. Campbell, and I was in Indiana at some point, I forget where it was, if you got the message I can tell you what point. It seemed to me like Indiana. I have forgotten, but I was out of town and Mr. Campbell indicated that date would be satisfactory to him, because he is in and out.

Q. And you sent that to him? A. Yes.

Q. What happened after you got up to Mr. Wiechert's office?

A. Well, Mrs. Stewart and her daughter and her husband had to pass my door to get [—] Mr. Campbell's office. I was at the end of the hall, but I am on the side. They had to pass my door and I saw them go by. I gave them enough time to get in there, and then I went on in. They were in Mr. Wiechert's office. Mr. Wiechert was there. Mrs. Stewart and Mrs. Hamm and Mr. Hamm, and I spoke to them and some mention was made about settling the case, and Mrs. Stewart said that there was not but one thing that caused her to hesitate on the proposition, and that was the question of the attorney fees to Mr. Noell, and Mr. Wiechert and I both assured her that the Southern Railway Company would stand behind her, and Mr. Noell, on any legal attorney fees that he might present or might have.

Q. That is, if Mr. Noell would get a judgment against [fol. 442] her or against the Southern Railway, either one of them, that you would pay it?

A. That is right. That was our proposition, we proposed to leave it go. She further stated, Mrs. Stewart did, that she would be doggone glad to get away from Mr. Noell, and asked me if I would give her a pass to go to Florida if she settled with me. I told her I could not give her a pass, but that if we settled this matter without going through the court, I would use my influence to have her pass privileges undisturbed, the same privileges she had during his lifetime.

Q. The same privileges during what?

A. The same privileges she had in that respect during his lifetime, and I did do that.

Q. How long did you stay in there?

A. Oh, I was in and out, Mr. Davis, until—I was not in there when Mr. Felsen came in, as I recall, but I was there while he was there.

Q. Did you go to Belleville with them?

A. No, sir. These people had planned on being there the day before, and I had to take this draft, and papers that I dated the day before, and destroy them, and make a new set, that is one of these papers were already in readiness, these people had first told us they would be there [fol. 443] the day before, and Mrs. Hamm called me on the appointed day and said they would not be there until the next day. That explains how the papers were already in readiness when they got there.

Q. Now, did you hear any conversation with respect to Mr. Hamm's job? A. None whatever.

Q. Did Mrs. Hamm turn to you and say, "It does not seem fair to bring my husband in it and his job in it", and then Mr. Wiechert turn to her and say, "It could be done and had been done"?

A. I did not hear that any time I was present.

Q. Was anything said about Mr. Hamm losing his job in any way, shape or form?

A. Not that I know, not to my knowledge.

Q. That, if it was, you did not hear it?

A. No, sir, I most assuredly did not.

Q. Did you say anything to her about Mr. Hamm losing his job?

A. Of course not. I would not say a thing like that.

Q. Did Mr. Wiechert do it, that you heard?

A. No, no. No one did.

Q. No one did? A. In my hearing.

Q. Did Mr. Hamm or Mrs. Hamm say anything about losing his job?

A. Not to me or in my presence.

Q. Did Mrs. Stewart say anything about Mr. Hamm losing [fol. 444] his job if she did not settle, or if they did not bring her to the office? A. Not in my presence.

Q. Mrs. McKelvey said that, I believe, that when you were over there that you offered, I don't remember whether it was four or five thousand dollars, and said that you would spend ten thousand dollars to see that Noell did not get anything. Did that conversation take place?



A. No, sir. Ten thousand dollars was mentioned in Mrs. McKelvey's presence, but not in connection with beating Mr. Noell.

Q. What was it?

A. I took with me, that was on the 21st or 20th—yes, the 21st day of April, and I took from my office with me down to—

Q. Who was present at this conversation?

A. Well, I am confused, just a moment, now. It was not on the 21st either.

Mr. Hay: Just a moment. I was not following. Did you ask him if he made the statement that Mrs. McKelvey said, that—I was not following him on it.

Mr. Davis: Yes, sir.

Mr. Hay: He said he did not?

Mr. Davis: Yes, sir.

Mr. Hay: Then I object to any further statement about that, if he denies making that statement.

[fol. 445] Mr. Sheppard: Your Honor, he certainly has a right to explain what statement he did make.

Mr. Hay: I think not.

Mr. Sheppard: He is not to be cut off at the hip pockets in that respect.

The Court: Overruled.

Q. What was the statement that you made?

A. I was advised a moment ago, when it was this took place at Mrs. McKelvey's house, was the last time I had seen Mrs. Stewart, was the morning she was ill, that she had rode to Salem the night before, was about a week later. I go down to Mrs. McKelvey's house and I take with me a docket record we keep in our office, and I learned in the meantime, of course, Mr. Noell represented this lady, at least the paper said so, the newspaper, and I showed Mrs. McKelvey this docket record. She asked me what I knew about Mr. Noell. I told her nothing except what I had heard, never seen the man in my life, never had any dealings with him, but I did have a record in my office, which started in 1925, ended up there in 1934, in a case

where Mr. Noell had guaranteed one of the widows of one of our employees ten thousand dollars, guaranteed her ten thousand dollars if she would permit him to handle her case, and in May, 1934, the Southern Railway won the [fol. 446] case and Mr. Noell had not paid the woman ten thousand dollars. That is where she got the ten thousand dollars. That was the Woods case against the Southern Railway, a man killed in Indiana.

Q. But was anything said in Mr. Wiechert's office when you were in there about Mrs. Stewart settling or not settling, as she wanted to?

A. Yes, sir. I said something to Mrs. Stewart about it.

Q. What was said?

A. I told her there was nothing compulsory on her part to settle this case, that the only thing about was certainty, that she knew she had five thousand dollars if she did settle. If she went to court she might get less, or get more, but I could not tell her how much more or how much less, or when, just the uncertainty of the thing.

Q. Here she had the five thousand dollars?

A. That is it.

Q. And no attorney fees to pay?

A. That is right, clear to her.

Mr. Davis: I think that is all.

The Court: Announce a five-minute recess.

(Recess, five minutes.)

#### Cross-Examination.

By Mr. Hay:

[fol. 447] Q. As I understand your testimony, the last time you saw Mrs. Stewart before you saw her over in the office of Mr. Campbell and Mr. Wiechert, was down at Coulterville, Illinois on April 20, 1937, is that right?

A. April 21st.

Q. You saw her the morning of the 21st?

A. Both days, the 20th and 21st.

Q. The conversation you had with her was on the 20th of April? A. Yes, sir.

Q. You had a talk with her that day, you say, for about three or four hours?

A. Two or three hours, about three hours.

Q. Out in the car, is that right? A. Yes, sir.

Q. You were invited in the house, weren't you?

A. I was in the house.

Q. Did the lady order you out of the house?

A. No, sir.

Q. She asked you to come into the house, didn't she?

A. Yes, sir.

Q. But you asked the lady to go down and talk to you in the car, didn't you? A. Yes, sir.

Q. You say you did not know that she had a lawyer at the time? A. That is right, I did not know it.

Q. Didn't she tell you she had a lawyer?

[fol. 448] A. No, sir.

Q. She told you that she had letters of administration?

A. Yes, sir.

Q. Or that she had been appointed administratrix?

A. Yes, sir.

Q. You did not ask her if she had any lawyer assist her in being appointed administratrix? A. No, sir.

Q. Why don't you know that she told you that Mr. Noell was her lawyer?

A. Mrs. Stewart never told me that.

Q. And didn't you tell her when she told you that, that you would not deal with Mr. Noell?

A. No, sir. I did not tell her that. I told her that on the 30th.

Q. How?

A. I told her that on the 30th of November, but not at Coulterville, because at Coulterville I did not know that he had been employed.

Q. And do you tell this jury that she agreed on the settlement of four thousand dollars?

A. Yes, sir, on April 20th, 1937.

Q. That day? A. Yes, sir, in the automobile.

Q. In the automobile? A. Yes, sir.

Q. The next day, do you tell us that she said she did [fol. 449] not want to talk to you?

A. She was in bed, said she was ill at the appointed hour, at 9:30 in the morning.

Q. Yes. Did you go in to see her at that time?

A. Yes, sir.

Q. Or just learn that she was in bed?

A. I saw her, walked up to the side of the bed where she was, held her hand, clutched her hand, told her I hoped she would feel better.

Q. From that day, the 21st, until November 30th, you did not see her again? A. Not as I recall.

Q. You did learn, you say, on the 21st that she had filed a suit? A. That is right.

Q. And then do you tell me that you went back down there after you learned that she had filed a suit?

A. Yes, sir.

Q. To see her?

A. Yes, sir; but she was not there.

Q. You did not go to see her lawyer? A. No, sir.

Q. You did not try to see her lawyer? A. No, sir.

Q. But then you knew she had a lawyer, didn't you?

A. That is what the newspapers say.

Q. Why, certainly, instead of getting in touch with her [fol. 450] lawyer you go back to see her.

A. I attempted to see her; I did not see her.

Q. You attempted to see her. And you tell this jury that you had with you then Mr. Noell's record in handling cases of this kind?

A. No, sir, I had my record.

Q. You had your record? A. My office record.

Q. And you had a record, did you, which showed that Mr. Noell had lost one of those cases, is that right?

A. Yes, sir, after nine years of litigation.

Q. Did you have the records showing the cases that he had won?

A. That was the last case he had had against us.

Q. My question is did you have any record showing the cases that he had won?

A. No. I only came here in 1933.

Q. Well, you knew he had won a lot of cases of this kind, didn't you?

A. No, sir, no, sir. I did not know that.

Q. What?

A. I say, no, sir, I did not know that.

Q. Why, don't you know that you knew his record of winning cases, numerous death cases, with verdicts running all the way from twenty to fifty thousand dollars?

Mr. Sheppard: Your Honor, we object to that.

The Court: Sustained. I do not think you have any [fol. 451] right to state the size of verdict. I think it is highly improper, Mr. Hay.



Q. Well, but you did not have anything to show any case that he had won, did you? A. No, sir.

Q. Why did you take that record down there to show Mrs. Stewart of a case that Mr. Noell had lost?

A. Because I thought it would be to Mrs. Stewart's interest to have as little as she could possibly have to do with Mr. Noell, based on that record.

Q. On that record? A. Yes, sir.

Q. Did you try to find out whether that record was typical of the cases that he handled?

A. It was the last case he had against us.

Q. My question is, did you try to find out whether or not that record was typical of the cases that he handled?

A. Typical of the one against us. I do not have cases—

Q. Don't you know just a short time before this, that he had gotten a verdict for twenty thousand dollars?

Mr. Davis: Your Honor, I object—

Mr. Hay: I think under the circumstances I am entitled to show that.

The Court: Let him make his objection.

Mr. Davis: We object to it.

[fol. 452] The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Didn't you know that just a short time before that he had gotten a verdict against the Southern Railroad for twenty thousand dollars?

A. I know that he had not since 1933, since 1925, I mean.

Q. Are you familiar with the Grant case?

A. No, never heard of it.

Q. It happened out of Belleville?

A. Never heard of it.

Q. Now, did you try to find out? You say you wanted, you thought it was in her interest to know about Mr. Noell?

A. I certainly did.

Q. Didn't you know that Mr. Noell's record and reputation was that of a man who with a high degree of success and fidelity, had represented people who had death claims and personal injuries claims against railroad companies?

A. That is not the way I heard it.

Q. Don't you know, as a matter of fact, that the very fact that he had had a record of unprecedented success in this community, was the reason why you and other railroad men were very bitter against Mr. Noell?

Mr. Davis: I object to that, Your Honor, because I do not think he ever had any unprecedented success.

[fol. 453] The Court: Well, we are not going to try that.

Mr. Davis: No.

Mr. Hay: No.

Mr. Sheppard: May it please Your Honor, that is another ground of objection.

Mr. Hay: We are perfectly willing to try that, Your Honor.

The Court: Well, I think the objection will be sustained to the question in the present form.

Q. Did you try to look up his record since you were wanting to advise this good woman about whether she should have anything to do with Mr. Noell or not?

A. No, sir. It came to me unsolicited.

Q. And unsolicited you took it down to this woman, didn't you? A. No, not unsolicited.

Q. Don't you know that the reason you took it down there was in order to scare this woman into taking what you offered?

A. No. I have never tried to frighten anyone, Mr. Hay, in connection with a claim.

Q. Will you look at this jury, look at them, and tell us this jury on your oath, that the reason you did that was your interest in this woman? Look over and tell them.

A. It was the interest of Mrs. Stewart and the Southern Railway, our mutual interest.

[fol. 454] Q. Oh! And in the interest of Mrs. Stewart and the Southern Railway, you got Mr.—this bird over here—

Mr. Sheppard: Now, Your Honor, we object to that remark.

The Court: Sustained.

Mr. Sheppard: And ask that counsel be rebuked, and I think, Your Honor, we will move for a mistrial. That is not the first time that occurred in this record.

The Court: Overruled, proceed.

Mr. Sheppard: Exception.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Well, this gentleman over here with this fancy tie on. I will ask you if it was in the interest of Mrs. Stewart and the Southern Railroad that you got him to see if he could use his influence in getting her to settle the case.

A. I see two or three fancy ties over there, Mr. Hay.

Q. You know who I am referring to. I am referring to your friend, Renow. A. Yes, sir.

Q. You got him to do it? A. Yes, sir.

Q. In the interest of Mrs. Stewart and the Southern Railroad? A. Yes, sir.

Q. Was it in the same interest that you got Mr. Hanley, down in Kentucky, to try to see if he could get a settlement for you? A. Yes, sir.

Q. And then finally you go to Mr. Howell, and get him to call Mr. Hamm in there, you did not go to Mr. Hamm yourself, did you?

A. No, sir. I have seen Mr. Hamm, talked to him at his home in connection with the matter Mrs. Stewart and I used to talk about.

Q. Did you talk to him after you talked to Mrs. Stewart down at Coulterville?

A. No, sir. Not until November 30, 1937.

Q. Would you mind telling the jury why you did not go to Mr. Hamm instead of asking Mr. Howell to bring Mr. Hamm in?

A. I thought that was the best way to handle it.

Q. Is that your only answer? A. Yes, sir.

Q. With some feeling, as I interpreted it a while ago, you said you told Mr. Howell that sometimes you found that your own employees were blocking the settlement, and you found that one of them was doing it this time, is that right?

A. That is not exactly right, Mr. Hay. That is real close to it.

Q. Hitting at it pretty well?

A. Yes. That is not what I testified to.

Q. Well, what did you say?

A. I told Mr. Howell that oftentimes we had cases [fol. 456] where we felt that our own employees were blocking the settlement, but in this case we were certain that that was the fact.

Q. And you wanted something done about it, didn't you? A. Yes, I did.

Q. And you wanted to do the most effective thing to get that employee in line, didn't you?

A. I don't know what line you are speaking of.

Q. I mean, to get him to favor a settlement, you wanted to do the most effective thing you could?

A. I did not care whether he favored it or not, but I just wanted him to stop blocking it, that is all I was interested in.

Q. You wanted to get him out of the way?

A. I wanted him to stop blocking the settlement, yes, sir.

Q. And to do that you go to the head of the Legal Department and ask him to call him in, didn't you?

A. No, I thought Judge Davis was the head of the Legal Department down there.

Mr. Davis: No. You are mistaken.

Q. No, Mr. Howell.

A. Well, I was under that impression, that Mr. Howell was, that was the man I went to.

Q. But you thought that would get him out of the way, didn't you? A. Yes, sir, I thought it would, and it did.

[fol. 457] Q. You were satisfied if Mr. Howell would call—

The Court: (Q.) What did you say?

Mr. Sheppard: "It did."

The Court: How?

Mr. Hay: What?

The Witness: It did. It worked, it worked all right.

Mr. Hay: That is all. That is all.

Mr. Davis: That is all.



Mr. Hay: I agree to that.

Mr. Davis: Wait a second.

**Redirect Examination.**

By Mr. Davis:

Q. Just explain why you got Mr. Renow in this?

A. Well, I had met Mr. Renow—I came to this country in May, 1933, and along about that same fall, either September or October, I met Mr. Renow, and formed a very close friendship, and we are still very good friends, we roomed together about two years. He is a former railroad man, Burlington. He is now in the insurance business and making a very nice success of it.

Mr. Stewart, the deceased in this case, had an accident on a crew in which he was the foreman, and Mr. J. W. Barnhill, one of his employees was fatally injured while Mr. Stewart was the foreman of this crew, along in November, [fol. 458] 1933, and Mr. Renow rode with me over to some address, I have forgotten which now, on State Street at the time that I interviewed Mr. Stewart in connection with the Barnhill accident.

I introduced Mr. Renow to Mr. Stewart. After I had finished my business with Mr. Stewart, Mr. Renow identified himself as being in the insurance business, and they talked insurance a little. I do not think he tried to sell him, but there was some conversation about that.

After Mr. Stewart was killed, Mr. Renow came in one night and I told him, I said, "Claude, do you remember John Stewart, a fellow we took the statement from on State Street in the Barnhill case?" He said, "Yes." I said, "Well, he was killed."

He told me then, he said, "I think I will go over and try to write that family some insurance."

I said, "I think that is a matter for you to decide." And the first contacts he made, so he has told me, was this connection with insurance.

Now, later, after Mrs. Stewart, you see Mrs. Stewart has never asked me for more than five thousand dollars at any time. At first, I did not have the five, as I recall. I

had twenty-five to start, then four and then the five. She had never asked me for more than five thousand dollars.

[fol. 459] Well, I did not get to tell Mrs. Stewart directly our position about it, but I told Mrs. McKelvey the day I took this docket record down there, "We will pay you that and stand between Mrs. Stewart and any attorney fee", and what I was trying to find out, and one reason I had for asking Mr. Renow to help me, was to find out why, when we had a woman there who was willing to take five thousand dollars, we were willing to pay it, yet she would not take it, I wanted to find out the proverbial nigger in the woodpile, and I found out to my satisfaction anyway, I knew Mr. Renow was trustworthy, I knew he could be relied upon. I knew he was fairly competent to find out those things for me.

Q. And he did find them out?

A. He did, yes, sir.

Q. And reported them to you? A. He did.

Q. What about Mr. Hanley, down in Kentucky?

A. I went to Mr. Hanley after I found out Mrs. Stewart was down at Hodgenville, I went to Hanley because he was the only railroad attorney in town, in that small town of Hodgenville, to find out the same thing Mr. Renow later found out for me.

Q. And that was what?

A. Well, he never did find out anything for me, Mr. Hanley [fol. 460] ley did not, except he did tell me that the deceased had a brother living in Salem, who I presume is that gentleman who testified here the other day, or a day or so ago. He never could find out why, that is who was blocking it, he had the same attitude as the rest did, that she was perfectly willing to take it, but this question of Mr. Noell jumping in, getting his hands on the five thousand dollars was, had her upset, but he did not find out who was blocking the settlement.

Q. But she wanted five thousand dollars clear?

A. Oh, perfectly willing to take it.

Q. Provided she could get it clear?

A. That is right.

Q. And that is what you mean by blocking it, whether or not the five thousand dollars would be clear to her?

A. I do not understand that question, Judge.

Q. I say, you said you found out who blocked it?

A. Yes, sir.

Q. And you found out what they wanted?

Mr. Hay: Just a moment. I object to his telling the man what he wanted.

Q. What was it you found out?

A. I found out that Mr. Hamm was the man who was blocking the settlement.

Q. For what reason? A. I do not know his reason.

[fol. 461] Q. You do not know his reason?

A. His reasons are his own.

Mr. Davis: That is all.

#### Recross Examination.

By Mr. Hay:

Q. Which one of the sons was it that you referred to a while ago, son of Mrs. Stewart, was the one working out here at the Coronado Hotel?

A. I made some reference to him, yes, sir.

Q. You say you were first authorized to pay twenty-five hundred dollars?

A. As I recall that is what it was.

Q. The first offer you made was a thousand dollars, wasn't it?

A. I don't remember.

Q. And then after you found out Mr. Noell was in it, you jumped it to four, then to forty-five, and finally to five thousand dollars, didn't you?

A. No, sir.

Q. Didn't you authorize Mr. Hanley down in Kentucky to go to her and see if he could not settle for forty-five hundred dollars?

A. No, sir.

Q. But you did not offer four thousand dollars at first, did you?

A. No, I did not have it.

[fol. 462] Q. Or five thousand dollars?

A. I was handling the other man's money, Mr. Hay. You got to handle what they want you to handle.

Mr. Hay: That is all.

Mr. Davis: That is all.

Mr. Sheppard: Your Honor, give us just a minute, until we see what we want to do, will you?

The Court: All right.

(At this point there was a short lull in the proceedings.)

CLAUDE C. RENOW, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant, in sur-rebuttal, as follows:

Direct Examination.

By Mr. Davis:

Q. Mr. Renow, won't you please state your name?

A. Claude C. Renow.

Q. And what is your business?

A. I am State General agent for the Massachusetts Protective Insurance Company.

Mr. Sheppard: A little louder.

The Court: Speak a little louder. The Court can't hear you. The Court and the jury and counsel must hear you.

[fol. 463] Q. And where is your office?

A. 1336 Boatmen's Bank Building.

Q. And where do you live?

A. 5462 Goethe, St. Louis.

Q. How long have you been with that company?

A. About six and one-half years.

Q. Did you ever call to see Mrs. Stewart in East St. Louis?

A. Yes, sir.

Q. And how did you happen to go there?

A. Well, Mr. Haun, as he explained a while ago, told me of Mr. Stewart's death, who I had met sometime prior to that, and naturally when there is a sudden death in any family an insurance man has an opportunity to get some business.

Q. Now, when you first went there, what did you say to Mrs. Stewart?

A. Well, I expressed my sympathy, told her who I was, gave her my card.

Q. Have you a card with you? A. Yes, sir.

Q. And your name is on this card? A. That is right.



Q. 1336 to 39 Boatmen's Bank Building?

A. That is right.

Q. St. Louis, Missouri. A. That is right.

Q. State general agent, Massachusetts Protective Company, Worcester, Massachusetts, health, accident and life insurance?

A. That is right.

Q. On that card. Is that the same kind of card that you gave her?

A. That is the only kind of card they put out.

[fol. 464] Q. And did you go to see her about the settlement of this case at that time?

A. No. The first time I was there I did not say anything about the settlement, because Mr. Haun, I guess had not tried to negotiate with her.

Q. Now, when was that, the first time you were there?

A. Well, I do not recall the dates, but it—

Q. Well, how long after his death?

A. Oh, I would say two or three weeks, something like that.

Q. Now, when was the next time that you saw her?

A. I was only there twice. I was there in the evening, and I was there the next time at noon.

Q. And when was that that you were there at noon, how long after Mr. Stewart's death?

A. Well, at the time I was there first, I found out that, where the family, that is where the boys worked, Mr. Stewart told me he had two sons and a son-in-law, he had a son-in-law who was a switchman, and the—

Q. That is when you first saw Mr. Stewart, who died?

A. That is right. That is when I was with Mr. Haun the first time, and I found out Mr. Stewart's age, I did not discuss insurance with him because he was past our age limit, but the next time I was there at noon I believe Mr. Hamm was asleep, and the boys who were waiters, you had [fol. 465] to contact them at different times, and I later found that they were not living there, that they were married, and on their own, and had their own homes.

Q. Now, did you ever—you were only there at Mr. Stewart's house twice, or Mrs. Stewart's house twice?

A. That is right.

Q. One of them was during the life of Stewart?

A. No. I was there twice after Mr. Stewart's death.

Q. After his death? A. That is right.

Q. Now, what was the second time you were there?

A. Well, I was not in the house the second time I was there. I asked for Mr. Hamm, if Mr. Hamm was there, and they said yes, he was sleeping, and said, "Don't disturb him".

Q. And did you say anything about the settlement of this case in either instance?

A. Yes. The settlement was brought up the second time I was there.

Q. With whom?

A. With Mrs. Hamm, I believe.

The Court: Who brought it up?

A. I believe I asked if she was,—how she was getting along with her settlement with the railroad.

The Court: I think you would save a good deal of time if you would give clearer answers.

Q. Now, did you see Mrs. Stewart at, I do not remember the name of that town, no, if was not Coulterville.

A. No, sir. I was never at Coulterville.

Q. No. Mrs. Stewart that testified here,—

A. Mr. Stewart?

Q. Yes.

A. Yes. I saw Mr. Stewart at Mr. Haun's request. He asked me to try to find out what was the reason that Mrs. Stewart would not make a settlement.

Q. And what conversation did you have with Mr. Stewart there?

A. Mr. Stewart told me that he was an in-law, and he said, "However, she has come to me for advice", but he said, "She will listen to her two sons and be guided by what they say more than by what I say, and I would suggest that you go see them", which I did. I went to the Coronado one evening and had dinner, and while there I talked to the son, and the son informed me that the mother was listening to Mr. Hamm more than she was to what they had to say.

Q. And you conveyed that to Mr.—

A. And I conveyed that message to Mr. Haun, so therefore I assume that he took the steps to find out why Mr. Hamm was trying to hold up the settlement.

Q. Were there any other conversations you had with them?

A. Well, I heard remarks made that I suggested that they get an attorney. That remark was made after Mrs. [fol. 467] Stewart told me, or her daughter, I believe it was, I do not recall which one, said that they had been run to death with lawyers, there had been at least 150 of them, they got so now they slipped up the back alley, come to the back door, tried to get an interview. I said, "Well, did you know that your husband was pretty friendly with Judge Cooke", who was a judge in East St. Louis, "Why don't you go to him and ask him his advice. I believe he would steer you right to somebody that you could depend upon". I said, "If you do not want to do that, we have a lawyer who represents our company, in fact he has represented me in a matter". I said, "He does not live in St. Louis but I know he is honorable and very reasonable, and he will understand both sides".

She wanted to know who it was and I told her. I told her it was Walter Stillwell, prosecuting attorney of Marion County, Hannibal, Missouri, who happens to be a very good friend of mine.

Q. Did you ever refuse to give your name to anybody?

A. No, sir.

Q. To Mrs. Stewart, to Mr. Stewart, or anybody else?

A. No. I believe Mrs. Stewart, Mr. Stewart said the other day I called on him and left my card. I would have no reason to call on one and leave my card and go to another [fol. 468] other and not tell my name. I have nothing to conceal or be ashamed of.

Q. You gave Mrs. Stewart your card?

A. That is right.

Q. The card I read here?

A. That is right. That is the only card I have, the Massachusetts Company.

Q. Were you ever connected with the W. P. A., the P. W. A., or the R. F. C., any of those other things?

A. I was with the Burlington Railroad until 1925. Since that time I have been in the insurance business.

Q. What position did you hold with the Burlington Railroad?

A. I was in the engine department. Naturally, Mr. Haun and I being railroad men, had a lot in common, pro and con.

Mr. Davis: I think that is all.

Cross-Examination.

By Mr. Hay:

Q. The first time you went to see Mrs. Stewart after Mr. Stewart's death, you were in company with Mr. Haun, weren't you?

A. I did not get your question, Mr. Hay.

Q. I say, were you in company with Haun, did I understand you to say, when you went to see Mrs. Stewart, the first time after Mr. Stewart's death?

A. No, sir. No, sir. I was in my own capacity in the insurance business.

[fol. 469] Q. But you went around to talk to her about insurance?

A. I was not going to talk to her. I wanted to see some members of the family that were insurable.

Q. Was that before or after his death?

A. That was after his death.

Q. After his death? A. Yes, sir.

Q. Had you talked to Mr. Haun before you went around to see the family about insurance?

A. Never, no. There was not anything mentioned about the claim the first time I went to see them.

Q. But you had learned that he was dead?

A. Well, Mr. Haun told me he was dead.

Q. Mr. Haun told you that? A. Yes.

Q. So you went around first to see about insurance?

A. That is right.

Q. And the next time you went around and you asked about the settlement of the case, didn't you?

A. Asked them how they was getting along.

Q. You asked them how they were getting along?

A. Yes.

Q. And you recommended finally that they get Mr. Stillwell to represent them, did you?



A. After I was confronted with the question, or they [fol. 470] told me 150 lawyers had been there and they did not know what to do.

Q. Then, whom did you see next?

A. Mr. Arthur Stewart.

Q. Arthur Stewart. You went to see him?

A. That is right.

Q. You went to see the son?

A. That is right.

Q. And you saw the daughter?

A. Well, the daughter, the only time I saw the daughter was the two times I was at home.

Q. In all that you did were you trying to help Mrs. Stewart?

A. Well, I might say that naturally my mutual interest was for Mr. Haun, but after his explanation of it, as he expressed himself, that Mrs. Stewart wanted the settlement and he could not understand why somebody had got hold of her and put the stop clock on it, I told him if I could be of any assistance, or if I could find out who was doing it, I would be glad to do it, and I did.

Q. So then you went to see Mrs. Stewart, and young Mr. Stewart, and Mrs. Hamm, did you ever go see Mr. Hamm?

A. No. I did not know that Mr. Hamm was holding up this settlement until after I had went to see the son.

Q. You found out the hours Mr. Hamm worked, didn't you? A. Found out he worked.

Q. Yes, when he worked?

A. Well, I think they told me he worked different shifts, [fol. 471] sometimes he is on a different shift, and then he would work another shift.

Q. You found out from Haun when he worked, didn't you?

A. No. I asked while I was at the house, his hours.

Q. And did you call at the hours when you expected him to be there, or at work?

A. Well, when I was there that first evening, he was working, and I assumed he would be there in the daytime, so that was my reason for going back about noon, because a railroad man that works from 4:00 to 12:00 naturally is up and around ready to, have his rest up.

Q. Then, you were only interested in insurance.

A. The first time I went there, because Mr. Haun had never tried to negotiate a settlement, as far as I know, at that time.

Q. So the first time was just to get acquainted with it, wasn't it?

A. No. The first time was to find out about insurance, where I could put my finger on them, to find out where I could see them.

Q. I see, about insurance?

A. That is right, the first time I was there.

Q. At one time did you pass Mrs. Stewart when she was in an automobile?

A. Not to my knowledge.

[fol. 472] Q. I see. You were in the vicinity down there at Coulterville and Salem?

A. Never been at Coulterville in my life.

Q. Around Salem?

A. I have been in Salem because my business takes me through that territory.

Q. When did you see Mr. Stewart in his lifetime?

A. As Mr. Haun told you, it was along in November.

Q. I am not asking about Mr. Haun. Let's forget about Mr. Haun for a moment. Tell me now, out of your own independent recollection, when you ever saw John Stewart in his lifetime?

A. It was along back in November.

Q. What year? A. 1933.

Q. 1933? A. That is right.

Q. You say you took a statement from him then?

A. No, Mr. Haun went out to see him about a statement.

Q. But Mr. Haun was working with you then, too?

A. No, he was not working with me then. Mr. Haun and I was roommates, and in his spare time, lots of times he would ride out with me while I would go to see an agent, and if he was not busy he would come along, and if I was not busy he would say, "Come on over, Renow, I got to see a man", or "get a statement".

Q. At that time, Mr. Renow, Mr. Haun took this statement [fol. 473] from John Stewart? A. Yes.

Q. Where is the statement?

A. How would I know. I did not have anything to do with the statement. Mr. Haun got the statement. I think it could be produced, however.

Q. Are you sure you were there when Mr. Haun got his statement?

A. That is right. I do not know what he did.

Q. Are you sure you ever saw John Stewart in your life? A. Yes, sir.

Q. You represented to Mrs. Stewart when you went around that you were a friend to Mr. Stewart, weren't you?

A. I had quite a friendly discussion with him about politics. He was a pretty red-hot Democrat.

Q. And you represented to her that you were friendly to him?

A. I did not exactly tell her I was intimate friends with him. I told her I met him, knew him, I got a big kick out of him because he was so red-hot Democrat.

Q. You know, as a matter of fact, do you not, that you went around to see this good woman and members of her family at the instance of Mr. Haun?

A. No, not the first time.

Q. To get on friendly terms with them, to see if you could not help him to settle with them on his terms?

A. No, no.

Mr. Hay: That is all.

[fol. 474] Mr. Davis: That is all.

(Witness excused.)

Mr. Davis: Mr. Haun, will you come around, please?

The Court: How many times has this man been on the stand?

Mr. Davis: Yes.

The Court: How many times has he been on the stand?

Mr. Davis: Well, they put him on two or three times, Your Honor.

The Court: How many times have you had him on?

Mr. Davis: I think this is the second time.

The Court: Get through with him this time.

Mr. Davis: I will just ask him one question.

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H. B. HAUN, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further, on behalf of the defendant, in sur-rebuttal, as follows:

Direct Examination.

By Mr. Davis:

Q. Mr. Haun, you took Mrs. Stewart out to the automobile to talk to her on this occasion at Coulterville?

A. Yes, sir.

Q. Why did you take her out there?

[fol. 475] A. So I could have some privacy with the woman, would not have too many interruptions, and probably get something done in connection with this claim.

Mr. Davis: I think that is all.

Q. Had you been interrupted theretofore?

A. Every time I was in her home, there was many interruptions, people running in from across the street, talking to this, that and the other one on the telephone. I wanted privacy and got it.

Mr. Davis: I see. That is all.

Cross-Examination.

By Mr. Hay:

Q. In other words, you did not want any interruption while you worked on her, did you?

A. I had no intention of working on the woman.

Q. Well, you finally say it worked all right, didn't you? A. It sure did.

Mr. Hay: That is all.

Mr. Davis: That is all.

(Witness excused.)

The Court: Do both sides rest?

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And thereupon the plaintiff, to further sustain the issues in her behalf, offered the following evidence, in re-surrebuttal:

[fol. 476] Mr. Hay: Mrs. Stewart, will you come around?

MRS. MARY STEWART, a witness of lawful age, having been heretofore duly produced, sworn and examined, upon being recalled to the witness stand, testified further on behalf of the plaintiff, in re-surrebuttal, as follows:

### Direct Examination.

By Mr. Hay:

Q. Mrs. Stewart, it was testified here by witnesses for the Southern Railroad Company, I think Mr. Haun stated it, and possibly Mr. Wiechert, that you said something to the effect that you wanted to get rid of Mr. Noell. Tell the jury whether you ever made such a statement or not?

A. Why should I make such a statement as that when I appointed him to take the case, and Mr. Haun knew that I had appointed him because I told him. He said to me, "When you get a lawyer be sure that you get a good one". So then I told him that I had Mr. Noell, and I asked him if he did not think he was a smart man. He said, "Well, yes, he is one of our smartest men".

Q. And when this thing was finally settled up, did you at any time make the statement that you wanted to get rid of Mr. Noell?

A. I certainly never, and I never said—

[fol. 477] Q. Now, after the settlement had been made under the circumstances that you have detailed here, and you had finally gone through with it, after these talks that you had had with Mr. Hamm and Mr. Wiechert, and all that, that you related, did Mr. Noell call you up, or did you call him up after that?

Mr. Davis: That is immaterial as to what she did, Your Honor, please.

Mr. Hay: I think, showing her attitude toward Mr. Noell, in the light of what has been stated here.

The Court: Overruled.

You may answer.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

A. Well, I felt they were working on me through my son-in-law, and I called my son up and I told him what had happened.

Mr. Sheppard: We move to strike that entire answer out, Your Honor, as not responsive to the question.

The Court: Sustained.

Q. Is that in connection with the calling of Mr. Noell?

A. Yes, sir. And I told him to call Mr. Noell, or bring him over, I wanted to talk to him.

Q. That was after you had gone through with this thing? A. Yes, sir.

[fol. 478] Mr. Sheppard: Pardon me. Let me move to strike the answer out now for the reason that it is wholly self-serving and hearsay.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Was there anything said about your wanting a pass, in order to get away from Mr. Noell?

A. No. I never said anything of the kind. My daughter joked him a little while, and he said he would get a pass if I took over any place I wanted to go, but I never asked him for no pass. I had no cause to ask for a pass because I could go in a car if I wanted to.

Mr. Hay: That is all.

Mr. Davis: That is all, may it please the Court.

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Which Was All the Evidence Offered in the Case.

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At this point, the defendant, by its counsel, filed with the Court, in writing, its motion for a directed verdict, in words and figures as follows, to-wit: (Marked "No. T")

(Motion of Defendant to Direct Jury to Return Verdict  
in Its Favor.)

(Omitting formal caption)

"At the close of the entire evidence and case, the defendant herein, Southern Railway Company, moves the Court to direct the jury to find a verdict in favor of de-[fol. 479] fendant and against plaintiff, for the reasons following:

1. That under the applicable rules of law, there was and is no substantial evidence adduced in this case showing or tending to show that defendant herein was or is guilty of any actionable negligence or want of duty whatever as charged in the petition.

2. That under the applicable rules of law, there was and is no substantial evidence adduced in this case that any actionable negligence or want of duty whatever of defendant was and is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

3. That under the applicable rules of law, there was and is no substantial evidence whatever in this case showing or tending to show any violation of any duty as charged in the petition.

4. That under the applicable rules of law, plaintiff cannot recover in this case, because the substantial evidence herein unequivocally shows that plaintiff filed in the Probate Court of St. Clair County, Illinois, a petition, duly signed and verified by her, praying that, as administratrix of the Estate of John R. Stewart, deceased, the said Probate Court order that, as such Administratrix, she be allowed, for the sum of Five Thousand Dollars, in full settlement of all claims and demands on account of fatal injuries to John R. Stewart, deceased, to accept said sum of money, and to execute and deliver to said defendant a release in writing, fully releasing, settling and satisfying all claims demands and rights of every kind, nature and description which she, as such administratrix of said estate, had on account of the fatal injuries to said deceased; that said petition was presented to said Probate Court and said Probate Court entered an order approving said settle-

ment for Five Thousand Dollars and authorized her, as such administratrix, to settle said claim with defendant and to execute and deliver to said defendant a full and complete release upon the payment of said sum of money; that in consideration of the execution of a full and complete release by her, as such administratrix, the defendant herein paid her the sum of Five Thousand Dollars, as such administratrix, and, as such administratrix, she executed and delivered to defendant a release, thus, releasing and discharging defendant from all claims, demands, actions, and rights of action that she then had or might thereafter have, as such administratrix, against defendant by reason of the fatal injuries to John R. Stewart, deceased, and specifically [fol. 481] accepted the sum of Five Thousand Dollars in full settlement of this cause of action and appropriated the said sum of money to her own use as such administratrix; that thereafter she filed a petition in said Probate Court of St. Clair County, Illinois, and moved said Court to set aside the settlement of said claim and cause of action herein, which said petition, to set aside the settlement and approval of settlement for fatal injuries to her decedent, the said Probate Court of St. Clair County, Illinois, denied. On these facts, the defendant moves the Court to direct the jury to find a verdict in its favor, because, as the authority of plaintiff to settle as such administratrix or the settlement thereunder had not been revoked or set aside by the Probate Court, or some other court of competent jurisdiction in Illinois, if any, this cause of action is a collateral attack on the orders and judgments of said Probate Court of St. Clair County, Illinois; of all of which aforesaid matters only the Probate Court of St. Clair County, Illinois, had full jurisdiction.

5. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant, its agents or servants was or is guilty [fol. 482] of any actionable fraud whatever.

6. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant was or is guilty of any actionable duress whatever.

7. That under the applicable rules of law, there was and now is no substantial evidence in this case impeaching or



tending to impeach the execution by the plaintiff of the release offered in evidence in this case.

8. That under the applicable rules of law, there was and now is no substantial evidence in this case showing or tending to show that there was any fraud or duress whatever in the matter of the execution of the release offered in evidence, nor is there any substantial evidence showing or tending to show that the plaintiff, at the time she executed the release in question did not know that she was executing a full release, discharging the defendant from all claims, demands, actions or rights of action that she then had or might thereafter have as such administratrix against the defendant by reason of the fatal injuries to her intestate.

Wherefore defendant respectfully asks that the Court [fol. 483] may hold as above specifically prayed and direct the jury to return a verdict in favor of defendant.

**SOUTHERN RAILWAY  
COMPANY,**

By Wilder Lucas,  
Arnot L. Sheppard,  
Walter N. Davis,  
Its attorneys of Record."

Which said motion was by the Court marked "Refused".

And to which action of the Court in refusing the said motion, the defendant, by its counsel, then and there at the time duly excepted.

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And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "A")

(Instructions to Jury Requested by Defendant.)

"If you decide that plaintiff is entitled to a verdict, then the Court charges you that you should also consider that you are giving her a verdict in a lump sum that would otherwise have come to her decedent in installments over a long period of time, and, of course, that would make whatever lump sum you decide to give, if you decide plaintiff is entitled to a verdict, necessarily much less than the ag-

gregate of the amount he would be paid each pay if working."

[fol. 484] Which said requested charge marked "A" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "B")

"The plaintiff is an interested witness. You should scrutinize the testimony of an interested witness with special care to ascertain whether or not his or her interest has caused him or her to testify falsely or color his or her testimony."

Which said requested charge marked "B" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "C")

"The Court charges the jury that if you find that plaintiff's decedent was injured by some act of his own not connected with a coupler, then the coupler would not be the proximate cause of his injury and plaintiff cannot recover. By proximate cause is meant that, which in a natural and a continuous sequence, unbroken by any intervening cause, which produces an event and without which an event would not have occurred. A proximate cause is that which is nearest in the order of responsible causations."

Which said requested charge marked "C" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "D")

"The Court charges the jury that in determining what weight you will give to the testimony of a witness, you should take into consideration his or her interest, if any, in the outcome of the litigation, and any other facts or circumstances which you consider affect his or her credibility."

[fol. 486] Which said requested charge marked "D" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there, at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "E")

"The Court charges the jury in this case that it is not disputed that the cars or cars in question were equipped with couplers that would couple automatically by impact."

Which said requested charge marked "E" was by the Court marked "Refused."

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there, at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "F")

"The Court charges the jury, at the close of the entire [fol. 487] evidence and case, that under the law, the "pleadings and the evidence in this case, the plaintiff is not entitled to recover and your verdict must be for defendant."

Which said requested charge marked "F" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "G")

"The Court charges the jury, at the close of plaintiff's case, that under the law, the pleadings and the evidence in this case, the plaintiff is not entitled to recover and your verdict must be for defendant."

Which said requested charge marked "G" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: [fol. 488] (Marked "H")

"The Court charges you that by the expression, 'Greater weight or preponderance of the evidence,' the Court means that evidence which has the greater weight with respect to its credibility."

Which said requested charge marked "H" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "I")

"The Court instructs the jury that if you believe from the evidence in this case that the plaintiff, Mary Stewart,



Administratrix of the estate of John R. Stewart, deceased, understood that she was signing a release, fully releasing and discharging the Southern Railway Company of any and all liability, by reason of the death of John R. Stewart, or, if you believe from the evidence that if the plaintiff did not so understand and that later by her actions confirmed and ratified the execution of the release in question by petition-[fol. 489] ing the Probate Court of the County of St. Clair and State of Illinois for an order approving and confirming the release executed by her, then, in either event, the release is a bar to the plaintiff's action, and it is your duty to find the issues for the defendant, Southern Railway Company."

Which said requested charge marked "I" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "J")

"The jury is instructed that if you believe from the evidence that at the time of the execution of the release offered in evidence, the plaintiff, Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, was mentally capable of understanding what she was doing, and if you further believe from the evidence that she understood that she had signed a release, releasing the Southern Railway Company of all liability for the death of the deceased, John R. Stewart, or if you believe that by the exercise of her ordinary [fol. 490] faculties she could have ascertained such fact, then it is your duty to find the issues for the defendant, Southern Railway Company."

Which said requested charge marked "J" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "K")

"The Court instructs the jury that you have no right to disregard the release in evidence because of any conduct, if any there be, on the part of the defendant, or its agents, which relates solely to the consideration for which such release was given. You are further instructed that if Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, signed the release in question with knowledge that she was releasing all claims for liability for the death of the said John R. Stewart, and there was no fraud or duress in the actual execution of the release, then, and in that case, the release is valid and binding upon the plaintiff, Mary Stewart, Administratrix of the estate of John R. Stewart, and you should find the issues in favor [fol. 491] of the defendant, Southern Railway Company."

Which said requested charge marked "K" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "L")

"The Court charges the jury that if the jury believe from the evidence that the said Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, ratified and confirmed her action in executing the release in evidence by filing her sworn petition in the Probate Court of the County of St. Clair and State of Illinois, requesting said Probate Court to enter an order approving said release executed by the said Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, then it is your

duty to find the issues in favor of the defendant, Southern Railway Company."

Which said requested charge marked "L" was by the Court marked "Refused".

[fol. 492] And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "M")

"The Court charges you gentlemen of the jury that if you believe from the evidence that Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, signed the release in question and received from the defendant, Southern Railway Company, or its agents, the sum of money therein mentioned, namely \$5000, then your verdict should be for the defendant, Southern Railway Company, unless you further believe from a preponderance of the evidence that the plaintiff at the time she signed said release, and at the time she petitioned the Probate Court of the County of St. Clair and State of Illinois for an order confirming and approving said release, she did not know or understand or could not, by the exercise of ordinary care, know that she was signing a full and complete release to the defendant in the premises."

Which said requested charge marked "M" was by the Court marked "Refused".

[fol. 493] And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "N")

"The Court charges the jury that if you find and believe from the evidence that plaintiff, Mary Stewart, was duly appointed Administratrix of the estate of John R. Stewart, deceased, by the Probate Court of St. Clair County, Illi-

nois, on or about April 16, 1937, and that thereafter she filed in said Probate Court, a petition duly signed and verified by her, in and by which petition plaintiff represented that defendant had offered and agreed, provided a full release could be obtained, to pay her, as Administratrix of the estate of John R. Stewart, deceased, the sum of Five Thousand Dollars in full settlement of all claims and demands on account of the fatal injuries to said deceased; and that she prayed in said petition that an order be entered in said Probate Court approving said settlement and authorizing and directing plaintiff, as such administratrix to make such settlement, and, upon payment to her of Five Thousand Dollars, to execute and deliver [fol. 494] to defendant herein a release in writing, fully releasing, settling, satisfying and determining all claims, demands, and rights of action of every kind, nature and description which she, as such administratrix of said estate, had on account of the fatal injuries to said deceased; and that on or about November 30, 1937, the said petition was presented to said Probate Court and that an order was entered in and by said Probate Court in and by which said settlement was approved and plaintiff was authorized, as such administratrix, upon receipt of the sum of Five Thousand Dollars, to settle said claim and to execute and deliver to defendant a full and complete release, settling, satisfying and discharging all claims, demands, actions and causes of action of every kind, nature and description which she, as such administratrix, had against defendant on account of the fatal injuries to John R. Stewart, deceased; and if you further find and believe from the evidence that on or about November 30, 1937, the plaintiff, as Administratrix of the Estate of John R. Stewart was paid the sum of Five Thousand Dollars by defendant, and that she, as such administratrix executed a release to defendant, releasing and discharging it from all claims, demands, actions and rights of action that she then had or might thereafter have against defendant [fol. 495] herein by reason of the fatal injuries to John R. Stewart, deceased; and if you further find and believe from the evidence in this case that defendant herein gave plaintiff, as such Administratrix a check or draft in consideration of said release and that plaintiff, as such administratrix cashed said check or draft; and that, on or about



December 10, 1937, plaintiff as such Administratrix filed in the Probate Court of St. Clair County, Illinois a petition to set aside the settlement of her claim as such Administratrix against defendant herein and that on or about January 31, 1938, in the Probate Court of St. Clair County, Illinois, the petition of Mary Stewart, as Administratrix of the Estate of John R. Stewart, deceased, to set aside the settlement for fatal injuries to her decedent, by the Probate Court of St. Clair County, Illinois, was denied, then your verdict must be for defendant, Southern Railway Company."

Which said requested charge marked "N" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and [fol. 496] asked the Court to charge the jury as follows, to-wit: (Marked "O")

"The Court charges the jury that you have no right to disregard the release in evidence on the ground of any inadequacy or insufficiency of the consideration named herein."

Which said requested charge marked "O" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "P")

"The Court charges the jury that if you find and believe from the evidence in this case, that Hamm, plaintiff's son-in-law, procured a railroad pass for his mother-in-law, and that witness Barrett told some one in the Hamm family that if he was Hamm he would watch himself, and that such statement was told to plaintiff and that plaintiff

was actuated in making the settlement by what Barrett said, and not by any other motive or statement, then plaintiff cannot recover and your verdict must be for defendant [fol. 497] ant."

Which said requested charge marked "P" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "Q")

"The Court charges the jury that if you find and believe from the evidence in this case that on or about November 30, 1937, the day of the settlement, neither witness Haun nor Wiechert said to plaintiff, or her daughter, Mrs. Hamm, or her son-in-law, Hamm, that Hamm could lose his job, and it had been done, if he did not obey orders and that he could be fired if he did not bring plaintiff to the office, then plaintiff cannot recover and your verdict must be for defendant."

Which said requested charge marked "Q" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then [fol. 498] and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "R")

"You are instructed that the term 'duress' means actual or threatened violence or restraint of one's person contrary to law, to compel a person to enter into a contract or to discharge one. Therefore you are instructed that duress will not prevail to invalidate a contract entered into with full knowledge of all the facts, with ample time and opportunity for investigation, consideration, consultation, reflection and no restraint, actual or threatened of his freedom of action.

You are further instructed that if you find and believe from the evidence herein that at the time plaintiff executed the release mentioned in evidence she understood what she was doing and had full power to execute or refuse to execute the release, insofar as actual or threatened restraint of her freedom of action was concerned; And if you further find and believe from the evidence, that before executing such release she consulted with other members of her family and was under no straint of any kind imposed [fol. 499] or threatened by the defendant, then you cannot find that she executed said release while under duress imposed by defendant.

You are further instructed that even though you find from the evidence herein that defendant's agents, servants and employees vexed and annoyed plaintiff in their efforts to persuade her to execute the release, such facts are wholly insufficient to prove that she executed the release while under duress. In this connection you are further instructed that before you can find that plaintiff executed the release in question under duress, you must find from the greater weight of the credible evidence that she was so overwhelmed by terror that she did not realize what she was doing at the time she executed said release.

You are further instructed that even though you may find from the evidence that plaintiff feared that unless she executed the release mentioned in evidence her son-in-law would lose his job with the Terminal Railroad Association of St. Louis, you cannot find that she executed said release under duress, for the reason that such fear, whether well or ill-founded, is wholly insufficient in law to constitute duress because it did not threaten violence to her, or restraint of her person, or terrorize her so that her freedom [fol. 500] of physical or mental action was suspended."

Which said requested charge marked "R" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with the Court, in writing, a requested charge to the jury, and

asked the Court to charge the jury as follows, to-wit: (Marked "S")

"The Court charges the jury that before you can find for plaintiff in this case it is necessary for you to find from the preponderance or greater weight of the evidence that plaintiff's decedent, John R. Stewart, was acting within the scope of his employment in going between the cars and that it was necessary for him in the discharge of his duties to go between the cars to couple or uncouple them."

Which said requested charge, marked "S" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

And thereupon, the defendant, by its counsel, filed with [fol. 501] the Court, in writing, a requested charge to the jury, and asked the Court to charge the jury as follows, to-wit: (Marked "U")

"The Court charges the jury that even though you may find and believe from the evidence in this case that one Hamm, plaintiff's son-in-law, was employed by the Terminal Railroad Association of St. Louis, and that he was called to the Legal Department of the Terminal Railroad by Joseph L. Howell, its attorney, on or about November 23, 1937, and that said Howell told said Hamm that defendant was offering to pay plaintiff Five Thousand Dollars clear, and that she was willing to take it, but that he (Hamm) was standing in the way, and that Hamm told Howell that he was because he did not want that woman gypped out of what money she gets, and that Howell then said to him, 'How about the Five Thousand Dollars,' and Hamm said 'That is all right to settle for that, if she gets the Five Thousand Dollars, but that he wanted it in writing, and that Howell advised said Hamm that if Bruce A. Campbell would say that plaintiff would get Five Thousand Dollars net and that plaintiff would be guaranteed by said Campbell that he would save her harmless on account of any attorney fees to her said attorney on account of this suit for the fatal injuries to John R. Stewart, deceased, and that he (Howell) would guarantee whatever [what-



[fol. 502] ever] said Campbell said, yet, if you further find from the evidence in this case that the said Howell did not intimidate, coerce or threaten to cause the said Hamm to be discharged unless plaintiff would settle her cause of action, as administratrix of John R. Stewart, deceased, with defendant, and that the said Howell did not bring pressure or undue influence to bear on Hamm and did not threaten to have Hamm, plaintiff's son-in-law, discharged from his job with the Terminal Railroad Association of St. Louis, unless plaintiff settled this case, then you must not consider the act of Howell in calling Hamm, plaintiff's son-in-law to the Legal Department of said Terminal Railroad Association of St. Louis as evidence of fraud or duress."

Which said requested charge marked "U" was by the Court marked "Refused".

And to which action of the Court in refusing to give the said charge to the jury, the defendant, by its counsel, then and there at the time duly excepted.

[fol. 503] At this point, 4:52 P. M., Monday, June 12, 1939, an adjournment was had until Tuesday, June 13, 1939, at 10:00 o'clock A. M.

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Pursuant to the said adjournment, the Court convened at 10:00 o'clock A. M., Tuesday, June 13, 1939, and the following proceedings were had:

And thereupon counsel made their closing arguments to the Court and the jury.

And thereupon the Court charged the jury as follows:

[fol. 504] The Court's Charge to the Jury.

The Court: It now becomes the duty of the Court to give you a charge of law that governs you in your deliberations in arriving at a verdict in this case.

I am going to do it at this time because we have a heavy docket here, and after you are given the charge of law in this case and are ready to retire, to deliberate upon your verdict, my purpose is to let you go to your jury room and proceed immediately with your deliberation, or, if you

choose, you may, at your own pleasure, go out and get your lunch, and then return to the jury room.

Under your oaths of office you are bound by the law as declared to you by the Court. If I should err in declaring that law, the blame rests upon me and not upon you.

It has been and will be the Court's purpose in this case to express no opinion on the facts, for that is your province, and the Court does not propose, even if it had the power to do so, to influence your judgment on the facts to even the slightest degree.

If it should seem to you at any time this Court has an opinion respecting what may or may not be the facts in the case, you should also remember that opinion is in no way binding upon you.

[fol. 505] The Court's conclusion should not and need not in any way control you in your finding upon the facts in this case.

You are instructed that you are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony.

You are warranted in considering the manner and appearance of the witness on the stand, his or her manner of testifying, the probability or improbability of the testimony which he or she gives; his or her situation to see and to observe, and his or her apparent candor or capacity to truthfully and accurately relate what he or she saw and observed.

You are also warranted in considering the relation and/or the feeling of any witness who has been offered before you, for the plaintiff, upon the one hand, and the defendant, upon the other.

You are instructed, if you find and believe from the evidence that any witness in the case has testified falsely on any material matter, you are at liberty to reject any part or all of the testimony of any such witness.

You will observe that there has been some testimony in this case which may be properly designated as expert testimony, that is to say, testimony of persons skilled

in some art, trade or science, who have knowledge in relation to matters which are not known to men of common education and experience.

You are instructed that such opinion evidence as has been given in this case is competent evidence for your consideration, and in your deliberations you are entitled to give to such evidence such weight and value as you may think it entitled, measured by the same standard as you would weigh the evidence of any other competent witness in the case.

The Court charges you that the only question for you to consider, so far as the release offered in evidence is concerned, is whether or not its execution was procured by fraud or duress. You are not, under the law, entitled to consider whether or not the amount paid was adequate for the death of the deceased, John R. Stewart.

If you believe from the evidence that there was no fraud or duress in the execution of the release, and the settlement was consummated in good faith by the Southern Railway Company, then it is your duty to find the issues in favor of defendant, Southern Railway Company.

The Court charges the jury, in determining whether the [fol. 507] release in evidence was procured by fraud or duress, you must not consider any representations, if any, made by defendant's attorneys or claim agents, that she had no valid cause of action against defendant, and that she could recover nothing against the defendant on account of the fatal injury to John R. Stewart, deceased.

If you find and believe from the evidence that defendant, through its agents and servants, in the effort to induce plaintiff to make the settlement mentioned in the evidence, committed acts and used language for the purpose of leading plaintiff to believe that unless she made the settlement her son-in-law would lose his employment with the Terminal Railroad Association, and that plaintiff did so believe, and because thereof, if you so find, was put in such a state of fear as to be unable to act of her own free will, and that while under such fear and while unable to act of her own free will, if you so find, she agreed to the settlement, and did the things mentioned in the evidence in connection

therewith; and if you further find and believe from the evidence that plaintiff would not otherwise have made the settlement; and if you further find that after the settlement was made plaintiff promptly rescinded the contract of release, and tendered to defendant the amount paid under [fol. 508] such settlement, then, you are instructed that the contract of release and settlement was not binding upon this plaintiff and should be disregarded by you.

The Court instructs the jury that, the Federal Safety Appliance Act requires that the car mentioned in the evidence be equipped with a coupler coupling automatically by impact without the necessity of men going between the ends of the cars, and the Employers Liability Act provides that no employee who may be injured shall be held guilty of contributory negligence in any case where the violation of such common carrier of any statute enacted for the safety of employees contributed to the injury of such employee; and the Court further instructs you that the Federal Safety Appliance Act is a statute enacted for the safety of employees, and the Court further instructs you that under the said Act it is unlawful for any common carrier or railroad to haul or permit to be hauled or used on its line of railroad any car used in moving interstate traffic that is not equipped with couplers coupling automatically; therefore, if you find and believe from the evidence that the deceased attempted to open the knuckle of the coupler mentioned in the evidence by means of the pin lifter extending on the outside of the car, and if you find the pin lifter was [fol. 509] used by deceased, and would not open the knuckle; and if you find that on the 12th day of February, 1937, the deceased thereupon went between the ends of the cars and was injured when attempting to open and adjust the coupler; and if you find that the failure of the coupler to operate automatically was the proximate cause of deceased's injury and death; then your verdict should be for the plaintiff, provided that you further find that the defendant was at the time of the injury to deceased engaged in interstate commerce and doing business in this Judicial District, and that deceased was engaged at the time of his injury in interstate commerce transportation of commerce with defendant.



You are instructed that it was the duty of the deceased, in the performance of his work, before going between the cars mentioned in the evidence, to couple the same, to use the device mentioned in the evidence known as the pin lifter, extending on the outside of the car, and in the absence of any evidence that he did not use the pin lifter, the law presumes that he did use the pin lifter before going between the ends of the cars, if you find he did go between the ends of the cars.

The Court charges the jury that before plaintiff may recover in this case, she must prove by the preponderance or the greater weight of the evidence that the injury to [fol. 510] and death of plaintiff's decedent were caused by the cars in question not being equipped with couplers coupling automatically by impact.

The Court charges the jury that the mere fact that the plaintiff's decedent may have sustained an injury and died therefrom, if you so find, is not sufficient in warranting you in returning a verdict against defendant in this case.

You cannot presume that the couplers would not couple by impact, but on the contrary the law places on plaintiff the burden of proving such facts to your reasonable satisfaction by the preponderance or greater weight of the credible evidence.

This burden abides with plaintiff throughout the case, and if you find that plaintiff has not proved the above facts to your reasonable satisfaction by the preponderance or greater weight of the evidence, or if you find the evidence on the subject to be evenly balanced, then in either state of events, plaintiff is not entitled to recover against defendant, and your verdict must be for the defendant.

The Court charges the jury, if you find that decedent was injured by some act of his own not connected with the [fol. 511] coupler, then the coupler would not be the proximate cause of his injury, and plaintiff cannot recover.

By proximate cause is meant the efficient producing cause of such injury, and of which such injury was the natural and probable consequence, and without which such injury would not have occurred.

The Court charges the jury that you cannot presume that the couplers on the cars in question would not couple automatically by impact, but on the contrary the law places upon the plaintiff the burden of proving such facts to your reasonable satisfaction by the preponderance or greater weight of the evidence.

Unless plaintiff has proven such facts to your reasonable satisfaction as above stated, then plaintiff is not entitled to recover in this case, and your verdict must be for defendant.

The Court charges the jury that you cannot presume that plaintiff's decedent, John R. Stewart went between the cars in question to make a coupling or adjust the coupling, nor can you presume from the mere fact that his arm was injured between couplers that he went between the cars in question to make a connection; therefore, unless plaintiff has proved to your reasonable satisfaction by the preponderance or greater weight of the evidence [fol. 512] dence that John R. Stewart, deceased, went between the cars to make a coupling or adjust the coupler, then the fact that he was injured by having his arm caught between the couplers was not the proximate cause of his injury and death, and plaintiff cannot recover, and your verdict must be for defendant.

While the burden with regard to making out a case of greater weight or preponderance of the evidence rests upon the plaintiff, you are instructed that the terms, "greater weight of the evidence", and "preponderance of the evidence", do not necessarily mean the greater number of witnesses.

The preponderance is determined from a consideration of all the credible evidence.

You are therefore instructed that if the credible evidence in the case preponderates in favor of the plaintiff, then the plaintiff has satisfied the requirements of the law which casts the burden of proof upon her.

The Court charges the jury in this case that the burden of proof rests upon the plaintiff to prove by the preponderance, that is, the greater weight of the credible evidence, the fact necessary to entitle her to recover, and the burden

[fol. 513] of proof does not shift from side to side, but constantly remains with the plaintiff; therefore, if you find the evidence to be evenly balanced in this case, or if you find plaintiff has not proved by the preponderance, that is, the greater weight of the evidence, facts necessary to entitle her to recover, then your verdict must be for the defendant.

The Court charges the jury, unless you find from the preponderance or greater weight of the evidence in this case, that the proximate cause of injury and death of decedent was caused by a coupler or couplers that would not couple automatically by impact, then your verdict must be for the defendant.

The Court charges the jury that no liability on the part of the defendant arises from the mere happening of an accident. The mere fact that an accident happened is not proof that the coupler would not couple automatically by impact.

There is no presumption in this case that the coupler would not couple automatically by impact.

The burden of proof predominates upon plaintiff, from the beginning to the end, to prove by the preponderance of the evidence the couplers would not couple automatically by impact, and, as a proximate result thereof, plaintiff's decedent was injured and died.

[fol. 514] The Court instructs the jury you are not permitted to try the case on a conjectural theory of liability, in order to hold defendant liable in damages in this case, but that you are to decide the case in accordance with the evidence and the law as declared to you by the Court.

The Court charges you in this connection that you should not suffer a sympathy for the plaintiff; because you may believe that plaintiff's decedent suffered an injury and died, to enter or play a part in your decision, nor should you permit the fact that defendant is a railroad corporation to influence you in arriving at your verdict.

You may then consider whether any witness has sworn falsely to any material fact in this case.

If you find he has, then you are warranted in rejecting the whole or any part of such witness' testimony.

The Court instructs the jury if you find for the plaintiff under the other instructions given you, you will assess her damages in such sum as you may find and believe from the evidence is the present cash value of the future pecuniary benefits, if any, of which the widow is deprived by the death of John R. Stewart, making adequate allowance for the spending power of money.

[fol. 515] You are further instructed that, in addition to the pecuniary loss or damage, if any, sustained by the widow, you may award plaintiff damages for the conscious pain and suffering, if any, endured by John R. Stewart in the interval between his injury and death.

You are further instructed that your award to plaintiff, if any, may not exceed the sum of \$65,000, the amount claimed by plaintiff, less the sum of \$5,000, the amount heretofore received by her.

The Court has caused to be prepared for you two blank forms of verdict.

If your finding shall be for the plaintiff, you will use the first of these forms, which I exhibit to you now, and fill in the blank space the amount of damages you find plaintiff is entitled to; and if your verdict should be for the defendant, you will use the second form, which I now exhibit to you.

In either event, when you have arrived at a verdict, remember in this court your verdict must be unanimous. It must be concurred in by all twelve of you.

You will have some member, it matters not which, sign it as foreman and return it into court.

Has the plaintiff any further suggestions or exceptions?

Mr. Noell: The charge is entirely satisfactory to the [fol. 516] plaintiff.

The Court: Has the defendant any further suggestions or exceptions?

Mr. Sheppard: Yes, Your Honor, the defendant has.

The Court: Well, step up here.

Mr. Sheppard: (To the Court out of the hearing of the jury.)



Defendant objects and excepts to the failure of the Court's charge anywhere to require the jury finding that the coupler involved in this controversy was defective and insufficient, or defective or insufficient or out of order or inefficient; for the further reason that the Court's charge wholly fails to define duress, and that the charge with respect to duress, and in which is contained the hypothesis upon which the jury is told it may find duress, does not contain the facts necessary to constitute duress under the law, but permits the jury to base its finding upon the foundation of duress, without the finding of any of the necessary facts which under the law constitute duress.

Defendant objects and excepts to that portion of the charge which tells the jury that in the absence of any testimony—

The Court: Have you any definition of duress?

[fol. 517] Mr. Sheppard: Yes, sir. I submitted it to Your Honor.

The Court: What is it?

Mr. Sheppard: I will come to that in a few minutes.

(Continuing)—that decedent did not make an attempt to lift the pin lifter, the law presumes that he did make such attempt before going between the cars; for the reason that that was an incorrect statement of the law; for two reasons: First, because it puts the burden of proof on the defendant initially to show that no effort was made; and, second, because it is a legal presumption which is wholly unwarranted by the law, and that such portion of the Court's charge conflicts with the other portions of the charge in which the jury is told that the burden of proof of the facts necessary to warrant a recovery by plaintiff rests upon plaintiff throughout the trial; that the fact that the coupler would not work is presumed, and it is in conflict with that portion of the Court's charge.

Defendant further objects and excepts to the failure and refusal of the Court to charge the jury with respect to the facts necessary to constitute duress in the manner re-

quested by defendant in its instruction, which was submitted to the Court and which the Court refused to give, [fol. 518] and which has been marked for convenience Instruction No. B, and contains the notation "Refused, Moore, J", at the end of it.

Mr. Davis: Can't we offer all these instructions refused, just this way, as we did before?

Mr. Sheppard: I do not know whether we can or not. I am afraid of it. I am afraid we have got to take them separately and individually, and cannot take a shotgun shot at it.

The Court: No, you can't do that.

Mr. Sheppard: Defendant further objects and excepts to the Court's charge with respect to the hypothesis announced to the jury upon which they may find that plaintiff acted under duress, for the reason that the sole hypothesis therein is the fact that Hamm was threatened with the loss of his job, and that plaintiff relied upon and believed that threat, and was caused to sign the release thereby; for the reason that such facts are wholly insufficient to constitute any duress or fraud of any kind or character, and each and every portion of the Court's charge hypothesizing a verdict for plaintiff based upon any fraud or any duress is wholly unsupported by any evidence in the case.

Defendant further objects and excepts to the Court's [fol. 519] refusal to give to the jury the instruction requested by it, which is for convenience marked with the letter "S", and which appears to have been refused by the word "Refused, Moore, J", in which the jury would have been charged that it was necessary to find from the preponderance or greater weight of the evidence that decedent was acting within the scope of his employment in going between the cars, and that it was necessary for him to do so in the discharge of his duties, for the reason that that portion or construction properly declares the law, and there is no other portion of the Court's charge on that subject.

Defendant objects and excepts to its requested instruction which has for convenience been marked "N", which

submitted to the jury the question of the efficacy of the Probate proceedings in the State of Illinois, and which portion of the charge the Court refused to give, for the reason that such Probate proceedings cannot be collaterally attacked in this case, and until they are set aside they constitute a bar to the further progress of this action, and the Court erred in refusing so to instruct or charge the jury.

Defendant further objects and excepts to that portion of the charge—to the Court's refusal to give the instruction marked for convenience "U", requested by defendant in this case, which submits to the jury the theory of the conversation between Mr. Howell and Mr. Hamm which appears in evidence here as wholly insufficient upon which to base a charge of fraud or duress, and that such hypothesis is not submitted by any other portion of the Court's charge.

Defendant further objects and excepts to the Court's refusal to give that portion of the charge submitted by defendant and designated by "M", which properly hypothesizes the facts with respect to duress, and they are not hypothesized in any other portion of the Court's charge.

Defendant further objects and excepts to the charge of the Court in that it refused to give to the jury that portion of the charge requested by defendant and identified or marked by the letter "L", which submits to the jury the question of whether or not plaintiff in this case, by her acts subsequent to the execution of the release has ratified the Probate proceedings and all proceedings leading up to the execution of the release.

Defendant further objects and excepts to the refusal of the Court to include in its charge the matter designated by the letter "K", and requested by defendant to be included [fol. 521] in the charge, to the effect that under the facts as developed by the testimony here, there is no fraud or duress shown in the actual execution of the release, and defendant was entitled to have the jury charged that unless there was fraud or duress shown in the actual execution of the release, the release was and is binding upon plaintiff in this case.

Defendant objects and excepts to the failure and refusal of the Court to include in its charge that matter submitted

by defendant in writing to the Court and marked with the letter "J", which would have informed the jury that if it found from the evidence that plaintiff was mentally capable of understanding what she was doing, and by the exercise of her ordinary faculties she could have ascertained such facts when she executed the release, then the release is binding upon plaintiff for the reason that such portion of the charge would have properly declared the law as applicable to the facts in this case.

Defendant further objects and excepts to the Court's charge in that it failed to include the matter submitted by defendant, which for convenience has been marked instruction numbered "I", to the effect that if plaintiff herein knew and understood what she was doing when she signed [fol. 522] the release or later confirmed and ratified the execution of the release in question by petitioning the Probate Court for an order approving and confirming the release, then in their finding the verdict should be for defendant, for the reason that such portion of the charge would have properly declared the law applicable to the facts herein, instead of the charge which the Court did give to the jury, which improperly declares the law as applied to those facts, and with special reference to those facts.

Defendant further objects and excepts to the Court's action in refusing to give to the jury that portion of the charge requested by defendant, identified by the letter "G", which would have told the jury that under the pleadings and evidence in this case the plaintiff is not entitled to recover, and the verdict must be for defendant for the reason that under the law and the facts herein no jury question was made.

Defendant further objects and excepts to the Court's charge in that as a whole it failed to require the jury to find any fact showing the existence of any fraud or duress in any way.

Defendant further objects and excepts to that portion of the Court's charge dealing with a definition of a greater [fol. 523] weight or preponderance of the evidence, for the reason that such portion of the charge does not properly define either the greater weight of the evidence or the



preponderance of the evidence, but is no more than a mere comment on the number of witnesses and the preponderance of the evidence.

Defendant further objects and excepts to that portion of the Court's charge dealing with the measure of damages, for the reason that the evidence in this record wholly fails to disclose the expectancy of either decedent or plaintiff, and wholly fails to take into consideration the Railway Retirement Act, and its effect upon the further earning power of the decedent.

Defendant further objects and excepts to the charge of the Court for the additional reason that this Court has no jurisdiction over this matter except to dismiss it for lack of jurisdiction.

Defendant further objects and excepts to the failure of the Court primarily to instruct a verdict in its favor for the reason assigned in the written instruction heretofore requested and refused by the Court.

I think that is all.

The Court: Gentlemen (addressing the jury), you may now retire and consider your verdict. As I told you, you [fol. 524] may determine for yourselves if you desire first to go to lunch and return here, say at 2:30. You may go now and determine that for yourselves.

And thereupon, at 1:35 P. M., Tuesday, June 13, 1939, the jury retired to their jury room, to consider of their verdict.

And thereafter, on the same day, to-wit, on the 13th day of June, 1939, the jury returned their verdict in words and figures as follows:

"United States of America,  
Eastern Division of the Eastern Judicial  
District of Missouri—ss.

In the District Court of the United States in and for Said  
Division of Said District.

Mary Stewart, Administratrix of the Estate of John R.  
Stewart, deceased, Plaintiff,  
No. 12154. vs.

Southern Railway Company, a corporation.

## Verdict.

We, the jury in the above entitled cause, find the issues herein joined in favor of the plaintiff, Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, and against the defendant, "Southern Railway Company, [fol. 525] and assess the damages of said plaintiff against said defendant in the sum of Seventeen thousand five hundred Dollars, (\$17500.00).

(Signed) C. F. HEBBELER,  
Foreman.

June 13, 1939."

Forasmuch, as said matters do not appear of record herein, the defendant has prepared and now files this transcript of evidence and proceedings, and prays that the same may be made a part of the record, which is [according] done on this ..... day of ....., A. D. 1939.

The foregoing transcript of evidence and proceedings has been examined and is hereby approved and agreed to by:

.....  
.....  
Attorneys for Plaintiff.

.....  
.....  
Attorneys for Defendant.

[fol. 526] Docket Entry Showing Filing of Notice of Appeal and Mailing Copies Thereof to Appellee, and to Approving Supersedeas Bond on Appeal.

September 19, 1939.

Defendant's notice of appeal to United States Circuit Court of Appeals, Eighth Circuit, from final judgment entered herein on June 13, 1939, which became final on August 24, 1939, on overruling of defendant's motion for a new trial, etc., filed in duplicate and a copy thereof forthwith mailed by the Clerk of the Court to Charles P. Noell and Charles M. Hay, Attorneys for plaintiff. Order filed and

entered fixing the amount of the supersedeas bond of defendant, on said appeal. Supersedeas bond of defendant in the sum of \$25,000.00, presented, approved and filed.

[fol. 527]

(Bond on Appeal.)

(Filed September 19, 1939.)

Know All Men By These Presents, that we, Southern Railway Company, a corporation, as principal, and American Surety Company of New York, a corporation duly authorized to sign bonds on appeal, as surety, are held and firmly bound unto Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, in the penal sum of Twenty-five Thousand Dollars (\$25,000.00), lawful money of the United States, to be paid to her and her respective executors, administrators or successors, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of September, A. D. 1939.

The Condition of the Above Obligation Is Such:

Whereas, on the 24th day of August, A. D. 1939, the above named Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, did obtain a final judgment against the above bounden, Southern Railway Company, a corporation, in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, for the sum of Seventeen Thousand Five Hundred Dollars (\$17,500), and costs of suit; and

Whereas, on the 19th day of September, A. D. 1939, the above named Southern Railway Company, a corporation, did, in accordance with Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, file with the said District Court a Notice of Appeal from said final judgment to the Circuit Court of Appeals for the Eighth Circuit; and,

Whereas, in accordance with said Rule as mentioned, the said Southern Railway Company, a corporation, desires a stay on appeal, and said District Court has fixed the amount of a supersedeas bond in the penal amount here-

inabove named, and said Southern Railway Company, a corporation, desires a stay on appeal and that this bond be a supersedeas bond, as provided by Rule 73, aforesaid.

Now, Therefore, if the above named Southern Railway Company, a corporation, shall satisfy said judgment in full, together with costs, interest and damages for delay; if for any reason the said appeal is dismissed, or if the said judgment is affirmed, and shall satisfy in full such modification of said final judgment and such costs, interest and damages as the said appellate court may adjudge and award, then and in that case this obligation to be null and void; otherwise to remain in full force and effect.

**SOUTHERN RAILWAY COMPANY,**  
By Bruce A. Campbell, (Seal)  
Its Division Counsel for the States of Illinois and Missouri.

**AMERICAN SURETY COMPANY OF  
NEW YORK,  
O. L. KINCHELOE,**

By O. L. Kincheloe, (Seal)  
Resident Vice President.

Attest:

E. K. Jackson,  
Resident Assistant Secretary.

[fol. 528] State of Illinois,  
County of St. Clair—ss.

Bruce A. Campbell, after being first duly sworn, upon his oath deposes and says that he is Division Counsel of the Southern Railway Company for the States of Illinois and Missouri; that as such Division Counsel he has authority to sign the Southern Railway Company's name to any and all appeal bonds given by the said Southern Railway Company in the States of Illinois and Missouri, and that he has such authority to sign said Southern Railway Company's name to the attached appeal bond; that he has such authority by virtue of a resolution of the Board of Directors of said Southern Railway Company.

(Seal)

**BRUCE A. CAMPBELL.**



Subscribed and sworn to before me this 18th day of September, A. D. 1939.

STELLA BURTON,  
Notary Public.

[fol. 529] Statement of Points Relied Upon on Appeal.

(Filed Sept. 20, 1939)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, Plaintiff,  
No. 12154. vs. Court Room No. 2.  
Southern Railway Company, a corporation, Defendant.

Comes now the defendant in the above entitled cause and says that in the record and proceedings in this cause in the United [—] District Court manifest error has occurred to the prejudice of this defendant, to-wit:

### I.

The said United States District Court erred in refusing a request of the defendant for a motion for a directed verdict, that is, an instruction or charge to the jury in the nature of a demurrer to the evidence offered by defendant at the close of plaintiff's case to find for defendant, which requested charge is as follows:

“At the close of plaintiff's evidence and case, the defendant herein, Southern Railway Company, moves the Court to direct the jury to find a verdict in favor of defendant and against plaintiff, for the reasons following:

1. That under the applicable rules of law, there was and is no substantial evidence adduced in this case showing or tending to show that defendant herein was or is guilty of any actionable negligence or want of duty what-  
[fol. 530] ever as charged in the petition.

2. That under the applicable rules of law, there was and is no substantial evidence adduced in this case that any actionable negligence or want of duty whatever of

defendant was and is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

3. That under the applicable rules of law, there was and is no substantial evidence whatever in this case showing or tending to show any violation of any duty as charged in the petition.

4. That under the applicable rules of law; plaintiff cannot recover in this case, because the substantial evidence herein unequivocally shows that plaintiff filed in the Probate Court of St. Clair County, Illinois, a petition, duly signed and verified by her, praying that, as administratrix of the Estate of John R. Stewart, deceased, the said Probate Court order that, as such administratrix, she be allowed, for the sum of Five Thousand Dollars, in full settlement of all claims and demands on account of the fatal injuries to John R. Stewart, deceased, to accept said sum of money, and to execute and deliver to said defendant a release in writing, fully releasing, settling and satisfying all claims, demands and rights of every kind, nature and description which she, as such administratrix of said estate, had on account of the fatal injuries to said deceased; that said petition was presented to said Probate Court and said Probate Court entered an order approving said settlement for Five Thousand Dollars and authorized her, as such administratrix, to settle said claim with defendant and to execute and deliver to said defendant a full and [fol. 531] complete release upon the payment of said sum of money; that in consideration of the execution of a full and complete release by her, as such administratrix, the defendant herein paid her the sum of Five Thousand Dollars, as such administratrix, and, as such administratrix, she executed and delivered to defendant a release, thus, releasing and discharging defendant from all claims, demands, actions, and rights of action that she then had or might thereafter have, as such administratrix, against defendant by reason of the fatal injuries to John R. Stewart, deceased, and specifically accepted the sum of Five Thousand Dollars in full settlement of this cause of action and appropriated the said sum of money to her own use as such administratrix; that thereafter she filed a petition in said Probate Court of St. Clair County, Illinois, and

moved said Court to set aside the settlement of said claim and cause of action herein; which said petition, to set aside the settlement and approval of settlement for fatal injuries to her decedent, the said Probate Court of St. Clair County, Illinois, denied. On those facts, the defendant moves the Court to direct the jury to find a verdict in its favor, because, as the authority of plaintiff to settle as such administratrix or the settlement thereunder had not been revoked or set aside by the Probate Court, or some other court of competent jurisdiction in Illinois, if any, this cause of action is a collateral attack on the orders and judgments of said Probate Court of St. Clair County, Illinois; of all of which aforesaid matters only the Probate Court of St. Clair County, Illinois had full jurisdiction.

[fol. 532] 5. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant, its agents or servants was or is guilty of any actionable fraud whatever.

6. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant was or is guilty of any actionable duress whatever.

7. That under the applicable rules of law, there was and now is no substantial evidence in this case impeaching or tending to impeach the execution by the plaintiff of the release offered in evidence in this case.

8. That under the applicable rules of law, there was and now is no substantial evidence in this case showing or tending to show that there was any fraud or duress whatever in the matter of the execution of the release offered in evidence, nor is there any substantial evidence showing or tending to show that the plaintiff, at the time she executed the release in question did not know that she was executing a full release, discharging the defendant from all claims, demands, actions or rights of action that she then had or might thereafter have as such administratrix against the defendant by reason of the fatal injuries to her intestate.

Wherefore defendant respectfully asks that the Court may hold as above specifically prayed and direct the jury to return a verdict in favor of defendant."

On the grounds,

No. 1. That there was and is no substantial evidence adduced in this case showing, or tending to show that de-[fol. 533] fendant herein was, or is guilty of actional negligence, or want of duty charged in the petition.

No. 2. There was and is no substantial evidence adduced in this case that any actionable negligence, or want of duty whatever of defendant was or is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

No. 3. There was and is no substantial evidence whatever in this case showing, or tending to show any violation of any duty as charged in the petition.

No. 4. That plaintiff can not recover in this case because all the substantial evidence herein unequivocally shows that plaintiff, as administratrix, petitioned the Probate Court of St. Clair County, Illinois, to settle her claim against defendant, as such administratrix, for Five Thousand Dollars, and that upon her petition the order was granted and that she settled and released her claim as such administratrix for Five Thousand Dollars, and the said Five Thousand Dollars was paid her as such administratrix, and that she received and accepted the same in settlement thereof, and that thereafter she filed a petition in said Probate Court to set aside the settlement, which the said Probate Court denied; and that this cause is a collateral attack on the said orders and judgment of the Probate Court of St. Clair County, Illinois, of which matters said Probate Court had full jurisdiction.

No. 5. That there was and is no substantial evidence in this case showing, or tending to show that the defendant, its servants or agents was or is guilty of any actionable negligence or fraud whatever.

[fol. 534] No. 6. That there was and is no substantial evidence in this case showing, or tending to show that defendant was or is guilty of any actionable duress whatever.

No. 7. That there was and is no substantial evidence in this case impeaching or intending to impeach the execution by plaintiff of the release in evidence in this case.



No. 8. That there was and is no substantial evidence in this case showing, or tending to show any fraud, or duress whatever in the execution of the release, or that plaintiff at the time she executed the release did not know that she was executing a full release discharging defendant from all claims.

## II.

The said United States District Court erred in refusing a request of the defendant for a motion for a directed verdict, that is, an instruction or charge to the jury in the nature of a demurrer to the evidence offered by defendant at the close of the entire case and evidence to find for defendant, which requested charge is as follows:

"At the close of the entire evidence and case, the defendant herein, Southern Railway Company, moves the Court to direct the jury to find a verdict in favor of defendant and against plaintiff, for the reasons following:

1. That under the applicable rules of law, there was and is no substantial evidence adduced in this case showing or tending to show that defendant herein was or is guilty of any actionable negligence or want of duty whatever as charged in the petition.

2. That under the applicable rules of law, there was [fol. 535] and is no substantial evidence adduced in this case that any actionable negligence or want of duty whatever of defendant was and is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

3. That under the applicable rules of law, there was and is no substantial evidence whatever in this case showing or tending to show any violation of any duty as charged in the petition.

4. That under the applicable rules of law, plaintiff cannot recover in this case, because the substantial evidence herein unequivocally shows that plaintiff filed in the Probate Court of St. Clair County, Illinois, a petition, duly signed and verified by her, praying that, as administratrix of the Estate of John R. Stewart, deceased, the said Probate Court order that, as such Administratrix, she be allowed, for the sum of Five Thousand Dollars, in full set-

tlement of all claims and demands on account of the fatal injuries to John R. Stewart, deceased, to accept said sum of money, and to execute and deliver to said defendant a release in writing, fully releasing, settling and satisfying all claims, demands and rights of every kind, nature and description which she, as such administratrix of said estate, had on account of the fatal injuries to said deceased; that said petition was presented to said Probate Court and said Probate Court entered an order approving said settlement for Five Thousand Dollars and authorized her, as such administratrix, to settle said claim with defendant and to execute and deliver to said defendant a full and complete release upon the payment of said sum of money; that in consideration of the execution of a full and complete release by her, as such administratrix, the defendant herein paid her the sum of Five Thousand Dollars, as such administratrix, and, as such administratrix, she executed and delivered to defendant a release, thus, releasing and discharging defendant from all claims, demands, actions, and rights of action that she then had or might thereafter have, as such administratrix, against defendant by reason of the fatal injuries to John R. Stewart, deceased, and specifically accepted the sum of Five Thousand Dollars in full settlement of this cause of action and appropriated the said sum of money to her own use as such administratrix; that thereafter she filed a petition in said Probate Court of St. Clair County, Illinois, and moved said Court to set aside the settlement of said claim and cause of action herein, which said petition, to set aside the settlement and approval of settlement for fatal injuries to her decedent, the said Probate Court of St. Clair County, Illinois, denied. On these facts, the defendant moves the Court to direct the jury to find a verdict in its favor, because, as the authority of plaintiff to settle as such administratrix or the settlement thereunder had not been revoked or set aside by the Probate Court, or some other court of competent jurisdiction in Illinois, if any, this cause of action is a collateral attack on the orders and judgments of said Probate Court of St. Clair County, Illinois; of all of which aforesaid matters only the Probate Court of St. Clair County, Illinois had full jurisdiction.

5. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant, its agents or servants was or is [fol. 537] guilty of any actionable fraud whatever.

6. That under the applicable rules of law, there was and is no substantial evidence in this case showing or tending to show that defendant was or is guilty of any actionable duress whatever.

7. That under the applicable rules of law, there was and now is no substantial evidence in this case impeaching or tending to impeach the execution by the plaintiff of the release offered in evidence in this case.

8. That under the applicable rules of law, there was and now is no substantial evidence in this case showing or tending to show that there was any fraud or duress whatever in the matter of the execution of the release offered in evidence, nor is there any substantial evidence showing or tending to show that the plaintiff, at the time she executed the release in question did not know that she was executing a full release, discharging the defendant from all claims, demands, actions or rights of action that she then had or might thereafter have as such administratrix against the defendant by reason of the fatal injuries to her intestate.

Wherefore defendant respectfully asks that the Court may hold as above specifically prayed and direct the jury to return a verdict in favor of defendant."

On the grounds,

No. 1. That there was and is no substantial evidence adduced in this case showing, or tending to show that defendant herein was, or is guilty of actionable negligence, or want of duty charged in the petition.

No. 2. That there was and is no substantial evidence adduced in this case that any actionable negligence, or want of [futy] whatever of defendant was or is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

No. 3. There was and is no substantial evidence whatever in this case showing, or tending to show any violation of any duty as charged in the petition.

No. 4. That plaintiff cannot recover in this case because all the substantial evidence herein unequivocally shows that plaintiff, as administratrix, petitioned the Probate Court of St. Clair County, Illinois, to settle her claim against defendant, as such administratrix, for Five Thousand Dollars, and that upon her petition the order was granted and that she settled and released her claim as such administratrix for Five Thousand Dollars, and the said Five Thousand Dollars was paid her as such administratrix, and that she received and accepted the same in settlement thereof, and that thereafter she filed a petition in said Probate Court to set aside the settlement, which the said Probate Court denied; and that this cause is a collateral attack on the orders and judgments of the Probate Court of St. Clair County, Illinois, of which matters said Probate Court had full jurisdiction.

No. 5. That there was and is no substantial evidence in this case showing, or tending to show that the defendant, its servants or agents was or is guilty of any actionable negligence or fraud whatever.

No. 6. That there was and is no [substnaitl] evidence in this case showing, or tending to show that defendant was [fol. 539] or is guilty of any actionable duress whatever.

No. 7. That there was and is no substantial evidence in this case impeaching, or intending to impeach the execution by plaintiff of the release in evidence in this case.

No. 8. That there was and is no substantial evidence in this case showing, or tending to show any fraud, or duress whatever in the execution of the release, or that plaintiff at the time she executed the release did not know that she was executing a full release discharging defendant from all claims.

### III.

The United States District Court erred in charging the jury, over the objection and exception of defendant, as follows:



"You are instructed that it was the duty of the deceased, in the performance of his work, before going between the [fol. 540] cars mentioned in the evidence, to couple the same, to use the device mentioned in the evidence known as the pin lifter, extending on the outside of the car, and in the absence of any evidence that he did not use the pin lifter, the law presumes that he did use the pin lifter before going between the ends of the cars, if you find he did go between the ends of the cars."

On the grounds that said charge is an incorrect statement of the law, for two reasons.

1st. Because it puts the burden of proof on the defendant initially to show that no effort was made.

2nd. Because it is a legal presumption which is wholly unwarranted by the law, and that such operation of the court's charge conflicts with the other portions of the charge in which the jury is told that the burden of proof that is necessary to warrant a recovery by plaintiff rests upon plaintiff throughout the trial; that the fact that the coupler would not work is presumed and it is in conflict with that portion of the court's charge.

#### IV.

That the United States District Court erred in charging the jury, over the objection and exception of defendant, as follows:

"If you find and believe from the evidence that defendant, through its agents and servants, in the effort to induce plaintiff to make the settlement mentioned in the evidence, committed acts and used language for the purpose of leading plaintiff to believe that unless she made the settlement her son-in-law would lose his employment with the Terminal Railroad Association, and that plaintiff did so believe, and because thereof, if you so find, was put [fol. 541] in such a state of fear as to be unable to act of her own free will, and that while under such fear and while unable to act of her own free will, if you so find, she agreed to the settlement, and did the things mentioned in the evi-

dence in connection therewith; and if you further find and believe from the evidence that plaintiff would not otherwise have made the settlement; and if you further find that after the settlement was made, plaintiff promptly rescinded the contract of release, and tendered to defendant the amount paid under such settlement; then, you are instructed that the contract of release and settlement was not binding upon this plaintiff and should be disregarded by you."

On the ground that the Court's charge wholly failed to define duress and that the charge with respect to duress in which is contained the hypothesis upon which the jury is told it may find duress, does not contain the facts necessary to constitute duress under the law, but permits the jury to base its finding upon a foundation of duress without the finding of any of the necessary facts which, under the law, constitute duress and that it failed to find any fact showing the existence of any fraud or duress in any way; and that the Court's charge announced to the jury a hypothesis upon which they may find that plaintiff acted under duress, for the reason that the sole hypothesis therein is the fact that Hamm was threatened with the loss of his job and that plaintiff relied upon and believed that threat and was caused to sign the release thereby; for the reason that such facts are wholly insufficient to constitute any duress, or fraud of any kind or character and each and every portion of the Court's charge hypothesizing a ver-[fol. 542] dict for plaintiff based upon any fraud, or any duress, is wholly unsupported in the evidence in this case.

## V.

The United States District Court erred in refusing a request by defendant to charge the jury as follows:

"If you decide that plaintiff is entitled to a verdict, then the Court charges you that you should also consider that you are giving her a verdict in a lump sum that would otherwise have come to her decedent in installments over a long period of time, and, of course, that would make whatever lump sum you decide to give, if you decide plaintiff is entitled to a verdict, necessarily much less than the aggregate of the amount he would be paid each day if working."

On the ground that it was the duty of the jury to consider, if they awarded plaintiff a verdict, that a lump sum given her ought to be much less than the aggregate of the amount he would be paid each day if working.

## VI.

The United States District Court erred in refusing the request of defendant to charge as follows:

"The plaintiff is an interested person. You should scrutinize the testimony of an interested witness with special care to ascertain whether or not his or her interest has caused him or her to testify falsely or color his or her testimony."

On the ground that plaintiff was an interested witness and that the jury had the right to scrutinize the testimony [fol. 543] of an interested witness to ascertain whether his or her interest had caused false, or the coloring of testimony.

## VII.

The United States District Court erred in refusing the request of defendant to charge as follows:

"The Court charges the jury that if you find that plaintiff's decedent was injured by some act of his own not connected with a coupler, then the coupler would not be the proximate cause of his injury and plaintiff cannot recover. By proximate cause is meant that which in a natural and a continuous sequence, unbroken by any intervening cause, which produces an event and without which an event would not have occurred. A proximate cause is that which is nearest in the order of responsible causations."

On the ground that if plaintiff's decedent was injured by some act not connected with the coupler, then the coupler would not be the proximate cause of his injury and plaintiff cannot recover, and on the further ground that the word "proximate" should have been defined in order that the jury might intelligently understand the issues.

## VIII.

The United States District Court erred in refusing, at the request of defendant, to charge the jury as follows:

"The Court charges the jury that in determining what weight you will give to the testimony of a witness, you should take into consideration his or her interest, if any, in the outcome of the litigation, and any other facts or circumstances which you consider affect his or her credibility."

[fol. 544] On the ground that the jury in order intelligently to understand the issues should have been charged that in determining what weight was to be given the testimony of a witness, his or her interest should have been taken into consideration.

### IX.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges the jury in this case that it is not disputed that the car or cars in question were equipped with couplers that would couple automatically by impact."

On the ground that there was no dispute that the car or cars in question were equipped with couplers that would couple automatically by impact.

### X.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges you that by the expression, 'Greater weight or preponderance of the evidence,' the court means that evidence which has the greater weight with respect to its credibility."

On the ground that it was error to refuse to define the term for the jury to understand what was meant by the greater weight, or preponderance of the evidence.

### XI.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

[fol. 545] "The Court instructs the jury that if you believe from the evidence in this case that the plaintiff, Mary Stewart, Administratrix of the estate of John B. Stewart, deceased, understood that she was signing a release, fully releasing and discharging the Southern Railway Company



of any and all liability, by reason of the death of John R. Stewart, or, if you believe from the evidence that if the plaintiff did not so understand and that later by her actions confirmed and ratified the execution of the release in question by petitioning the Probate Court of the County of St. Clair and State of Illinois for an order approving and confirming the release executed by her, then, in either event, the release is a bar to the plaintiff's action, and it is your duty to find the issues for the defendant, Southern Railway Company."

On the ground that the Court's charge failed to submit the matter that plaintiff herein knew and understood what she was doing when she signed the release, but later confirmed and ratified the execution of the release in question by petitioning the Probate Court for an order approving and confirming the release, then in their finding the verdict should be for defendant for the reason that such portion of the charge would have properly declared the law applicable to the facts herein, instead of the charge which the Court did give to the jury which improperly declared the law as applied to these facts and with special reference thereto.

## XII.

The United States District Court erred in refusing to give the jury, at the request of defendant, an instruction [fol. 546] as follows:

"The jury is instructed that if you believe from the evidence that at the time of the execution of the release offered in evidence, the plaintiff, Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, was mentally capable of understanding what she was doing, and if you further believe from the evidence that she understood that she had signed a release, releasing the Southern Railway Company of all liability for the death of the deceased, John R. Stewart, or if you believe that by the exercise of her ordinary faculties she could have ascertained such fact, then it is your duty to find the issues for the defendant, Southern Railway Company."

On the ground that the Court failed to include in its charge that the matters submitted to it in writing an in-

struction which would have informed the jury that if it found from the evidence that plaintiff was mentally capable of understanding what she was doing, and by the exercise of her ordinary faculties could have ascertained such facts when she executed the release, then the release was binding upon plaintiff and the charge would have properly declared the law as applicable to the facts in this case.

### XIII.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court instructs the jury that you have no right to disregard the release in evidence because of any conduct, if any there be, on the part of the defendant, or its agents, which relates solely to the consideration for which such [fol. 547] release was given. You are further instructed that if Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, signed the release in question with knowledge that she was releasing all claims for liability for the death of the said John R. Stewart, and there was no fraud or duress in the actual execution of the release, then, and in that case, the release is valid and binding upon the plaintiff, Mary Stewart, Administratrix of the estate of John R. Stewart, and you should find the issues in favor of the defendant, Southern Railway Company."

On the ground that there is and was no fraud, or duress shown in the actual execution of the release and defendant was entitled to have the jury charged that unless there was fraud, or duress shown in the actual execution of the release, the release was and is binding upon plaintiff in this case.

### XIV.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges the jury that if the jury believe from the evidence that the said Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, ratified and confirmed her action in executing the release in evidence by filing her sworn petition in the Probate Court of the County of St. Clair and State of Illinois, requesting said Probate Court to enter an order approving said re-

lease executed by the said Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, then it is your duty to find the issues in favor of the defendant, Southern Railway Company."

[fol. 548] On the ground that by her acts subsequent to the execution of the release she ratified the probate and all proceedings leading up to the execution of the release.

### XV.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges you gentlemen of the jury that if you believe from the evidence that Mary Stewart, Administratrix of the estate of John R. Stewart, deceased, signed the release in question and received from the defendant, Southern Railway Company, or its agents, the sum of money therein mentioned, namely \$5000, then your verdict should be for the defendant, Southern Railway Company, unless you further believe from a preponderance of the evidence that the plaintiff at the time she signed said release, and at the time she petitioned the Probate Court of the County of St. Clair and State of Illinois for an order confirming and approving said release, she did not know or understand or could not, by the exercise of ordinary care, know that she was signing a full and complete release to the defendant in the premises."

On the ground that said instruction properly hypothesized the facts with respect to duress, and that they are not hypothesized in any other portion of the Court's instructions.

### XVI.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges the jury that if you find and believe from the evidence that plaintiff, Mary Stewart, was duly appointed Administratrix of the estate of John R. [fol. 549] Stewart, deceased, by the Probate Court of St. Clair County, Illinois, on or about April 16, 1937, and that thereafter she filed in said Probate Court, a petition duly signed and verified by her, in and by which petition plain-

tiff represented that defendant had offered and agreed, provided a full release could be obtained, to pay her, as Administratrix of the estate of John R. Stewart, deceased, the sum of Five Thousand Dollars in full settlement of all claims and demands on account of the fatal injuries to said deceased; and that she prayed in said petition that an order be entered in said Probate Court approving said settlement and authorizing and directing plaintiff, as such administratrix to make such settlement, and, upon payment to her of Five Thousand Dollars, to execute and deliver to defendant herein a release in writing, fully releasing, settling, satisfying and determining all claims, demands, and right of action of every kind, nature and description which she, as such administratrix of said estate, had on account of the fatal injuries to said deceased; and that on or about November 30, 1937, the said petition was presented to said Probate Court and that an order was entered in and by said Probate Court in and by which said settlement was approved and plaintiff was authorized, as such administratrix, upon the receipt of the sum of Five Thousand Dollars, to settle said claim and to execute and deliver to defendant a full and complete release, settling, satisfying and discharging all claims, demands, actions and causes of action of every kind, nature and description which she, as such administratrix, had against defendant on account of the fatal injuries to John R. Stewart, deceased; and if you further find and believe from the evidence that on or about November 30, 1937, the plaintiff, as Administratrix of the Estate of John R. Stewart was paid the sum of Five Thousand Dollars by defendant, and that she, as such administratrix executed a release to defendant, releasing and discharging it from all claims, demands, actions and rights of action that she then had or might thereafter have against defendant herein by reason of the fatal injuries to John R. Stewart, deceased; and if you further find and believe from the evidence in this case that defendant herein gave plaintiff, as such Administratrix a check or draft in consideration of said release and that plaintiff, as such administratrix cashed said check or draft; and that, on or about December 10, 1937, plaintiff as such Administratrix filed in the Probate Court of St. Clair County, Illinois, a petition to set aside the settlement of her



claim as such Administratrix against defendant herein and that on or about January 31, 1938, in the Probate Court of St. Clair County, Illinois, the petition of Mary Stewart, as Administratrix of the Estate of John R. Stewart, deceased, to set aside the settlement for fatal injuries to her decedent, by the Probate Court of St. Clair County, Illinois, was denied, then your verdict must be for defendant, Southern Railway Company."

On the ground that the Probate proceedings in the Probate Court of St. Clair County, Illinois, can not be collaterally attacked in this case until they are set aside and that they constitute a bar to the further progress of this action until set aside by motion, or by direct proceeding.

### XVII.

[fol. 551] The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges the jury that you have no right to disregard the release in evidence on the ground of any inadequacy or insufficiency of the consideration named herein."

On the ground that any inadequacy or insufficiency of consideration was not a matter to be considered by the jury in determining the liability of the defendant.

### XVIII.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges the jury that if you find and believe from the evidence in this case that on or about November 30, 1937, the day of the settlement, neither witness Haun nor Wiechert said to plaintiff, or her daughter, Mrs. Hamm, or her son-in-law, Hamm, that Hamm could lose his job, and it had been done, if he did not obey orders and that he could be fired if he did not bring plaintiff to the office, then plaintiff cannot recover and your verdict must be for defendant."

On the ground that the fact that neither Haun, nor Wiechert told plaintiff, or her daughter, or her son-in-law,

Hamm, that Hamm could lose his job, it had been done, if he did not obey orders, and that he could be fired if he did not bring plaintiff to the office, was a proper issue for the jury.

### XIX.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

[fol. 552] "You are instructed that the term 'duress' means actual or threatened violence or restraint of one's person contrary to law, to compel a person to enter into a contract or to discharge one. Therefore you are instructed that duress will not prevail to invalidate a contract entered into with full knowledge of all the facts, with ample time and opportunity for investigation, consideration, consultation, reflection and no restraint, actual or threatened of his freedom of action.

You are further instructed that if you find and believe from the evidence herein that at the time plaintiff executed the release mentioned in evidence she understood what she was doing and had full power to execute or refuse to execute the release, insofar as actual or threatened restraint of her freedom of action was concerned; And if you further find and believe from the evidence, that before executing such release she consulted with other members of her family and was under no restraint of any kind imposed or threatened by the defendant, then you cannot find that she executed said release while under duress imposed by defendant.

You are further instructed that even though you find from the evidence herein that defendant's agents, servants and employees vexed and annoyed plaintiff in their efforts to persuade her to execute the release, such facts are wholly insufficient to prove that she executed the release while under duress. In this connection you are further instructed that before you can find that plaintiff executed the release in question under duress, you must find from the greater weight of the credible evidence that she was so overwhelmed by terror that she did not realize what she was doing at the time she executed said release."

You are further instructed that even though you may find from the evidence that plaintiff feared that unless she

executed the release mentioned in evidence her son-in-law would lose his job with the Terminal Railroad Association of St. Louis, you cannot find that she executed said release under duress, for the reason that such fear, whether well or ill-founded, is wholly insufficient in law to constitute duress because it did not threaten violence to her, or restraint of her person, or terrorize her so that her freedom of physical or mental action was suspended."

On the ground that said court failed and refused to charge the jury with respect to the facts necessary to constitute duress in the manner requested by defendant which was submitted to the Court and which the Court refused to give, which instruction contains the facts necessary to constitute duress or fraud under the law and permits the jury to determine the matter of duress, or fraud under a proper hypothesis.

## XX.

The United States District Court erred in refusing to instruct the jury, at the request of defendant, as follows:

"The Court charges the jury that before you can find for plaintiff in this case it is necessary for you to find from the preponderance or greater weight of the evidence that plaintiff's decedent, John R. Stewart, was acting within the scope of his employment in going between the cars and that it was necessary for him in the discharge of his duties to go between the cars to couple or uncouple them."

[fol. 554] On the ground it was proper to charge the jury that it was necessary to find from the preponderance, or greater weight of the evidence that decedent was acting within the scope of his employment in going between the cars and that it was necessary for him to do so in the discharge of his duties, and that said instruction properly declares the law and there is no other portion of the Court's charge on that subject.

## XXI.

The United States District Court erred in refusing to charge the jury, at the request of defendant, as follows:

"The Court charges the jury that even though you may find and believe from the evidence in this case that one Hamm, plaintiff's son-in-law, was employed by the Ter-

minal Railroad Association of St. Louis, and that he was called to the Legal Department of the Terminal Railroad by Joseph L. Howell, its attorney, on or about November 23, 1937, and that said Howell told said Hamm that defendant was offering to pay plaintiff Five Thousand Dollars, clear, and that she was willing to take it, but that he (Hamm) was standing in the way, and that Hamm told Howell that he ~~w~~<sup>was</sup> because he did not want that woman gypped out of what money she gets, and that Howell then said to him, 'How about the Five Thousand Dollars,' and Hamm said 'That is all right to settle for that, if she gets the Five Thousand Dollars, but that he wanted it in writing, and that Howell advised said Hamm that if Bruce A. Campbell would say that plaintiff would get Five Thousand Dollars net and that plaintiff would be guaranteed by said Campbell that he would save her harmless on account [fol. 555] of any attorney fees to her said attorney on account of this suit for the fatal injuries to John R. Stewart, deceased, and that he (Howell) would guarantee whatever said Campbell said, yet, if you further find from the evidence in this case that the said Howell did not intimidate, coerce or threaten to cause the said Hamm to be discharged unless plaintiff would settle her cause of action, as administratrix of John R. Stewart, deceased, with defendant, and that the said Howell did not bring pressure or undue influence to bear on Hamm and did not threaten to have Hamm, plaintiff's son-in-law, discharged from his job with the Terminal Railroad Association of St. Louis, unless plaintiff settled this case, then you must not consider the act of Howell in calling Hamm, plaintiff's son-in-law to the Legal Department of said Terminal Railroad Association of St. Louis as evidence of fraud or duress."

On the ground that the conversation between Mr. Howell and Mr. Hamm which appears in evidence was wholly insufficient upon which to base a charge of fraud, or duress, and that such hypothesis is not submitted by any other portion of the Court's charge.

## XXII.

The said United States District Court erred in refusing to admit in evidence, at the request of defendant, and in sustaining plaintiff's objections to the admission of De-



fendant's Exhibits 4, 5, 6, 7, 8 and 9, and each of them separately, as follows:

[fol. 556] (Deft's. Ex. 4 6/9/39 CPA).

In The Probate Court of St. Clair County, Illinois.

In the Matter of the Estate of  
John R. Stewart, deceased.

Order.

And now on this 30th day of November, A. D. 1937, being one of the judicial days of the November Term of this court, comes Mary Stewart, widow of John R. Stewart, deceased, and administratrix of his estate, and files her verified petition praying that she may be authorized as such administratrix to settle all claims and demands that she may have as such administratrix against the Southern Railway Company on account of the fatal injuries received by said deceased on February 12, 1937, in his employment as a switchman for Southern Railway Company, from which injuries said deceased died on the 14th day of February, 1937, and that at the time of said injuries said deceased and said Southern Railway Company were engaged in interstate commerce, and that said Southern Railway Company has offered and agreed, provided a full and complete release can be obtained, to pay to said administratrix the sum of Five Thousand Dollars (\$5000.00), in full settlement of all claims and demands on account of said fatal injuries to said deceased.

Said petitioner further represents that one Charles P. Noell, whose business address is 1502 Telephone Building, in the city of St. Louis, Missouri, claims to have a lien for attorney fees on the amount which petitioner receives in [fol. 557] settlement of said claim, and that any such lien which the said Charles P. Noell may claim is null and void and of no force and effect, and that said Charles P. Noell is not entitled to any attorney fees or any lien for attorney fees on said settlement, and further prays that an order be entered by the Court herein directing that said Charles P. Noell be notified to appear in this cause by a short day to be fixed by the Court, to assert and present his claim, if any, for attorney fees or lien for attorney fees against said administratrix arising out of said settlement.

And the Court having examined said petition and having heard evidence in support thereof, and being fully advised in the premises, doth find that the Court has jurisdiction of the subject matter and of the parties to this proceeding; that the payment of the sum of Five Thousand Dollars (\$5000.00) to said administratrix of said estate in full settlement of all claims and demands, actions and causes of action accrued to her as such administratrix by reason of the fatal injuries to said deceased, John R. Stewart, received at the time and place aforesaid, will be the payment under all circumstances of a reasonable, just and proper amount therefor, and that it is for the best interests of said estate and all persons interested therein that said settlement be made, and upon the payment of the same that a full release be given to the said Southern Railway Company.

It Is, Therefore, Ordered And Adjudged by the Court that said settlement be and the same is hereby approved, and that upon receipt of the sum of Five Thousand Dollars (\$5000.00) the said administratrix of the estate of said [fol. 558] deceased be and she is hereby authorized to settle said claim and to execute and deliver to the said Southern Railway Company a full and complete release settling, satisfying and discharging all claims, demand, actions and causes of action of every kind, nature and description which she, the said administratrix of said estate, has against said Southern Railway Company on account of said fatal injuries to said deceased as aforesaid.

It Is Further Ordered And Adjudged that the claim of one Charles P. Noell for attorney fees or lien for attorney fees against said administratrix on account of said settlement be and the same is set for hearing at 9:30 A. M., on the 10th day of December, 1937, at which time the said Charles P. Noell shall appear and present his claim for such attorney fees or lien for attorney fees.

It Is Further Ordered And Adjudged that the Clerk of this court shall immediately send to the said Charles P. Noell addressed to him at 1502 Telephone Building, St. Louis, Missouri, a certified copy of this order, by registered United States mail, which shall constitute notice to the said Charles P. Noell of the hearing before this Court of his claim for attorney fees or lien for attorney fees.

It Is Further Ordered And Adjudged that the administratrix make no distribution of said amount so received in settlement from Southern Railway Company until the further order of this court.

(Signed) PAUL H. REIS,  
Judge."

[fol. 559] (On the back of said order, Defts. Ex. 4, appears the following notation:)

"62-531 Estate of John R. Stewart, Dec'd.

Order for Settlement.

Filed Nov. 30, 1937 L. O. Reinhardt, Probate Clerk."

(Defts. Ex. 5 6/9/39 CPA).

"In the Probate Court of St. Clair County, Illinois.

In the Matter of:

The Estate of John R. Stewart, Deceased.

Petition for Setting Aside Order Authorizing Settlement.

Petitioner states that she is the duly appointed, qualified and acting administratrix of the estate of John R. Stewart, deceased.

That on the 30th day of November, 1937, she filed a petition before your Honor praying for authority to settle her claim for the wrongful death of her husband.

Petitioner states that the papers signed by her praying for authority to settle her claim were signed as a result of fraud and duress on the part of the Southern Railroad Company, and its agents and attorneys.

That since the filing of the Petition for authorization to settle her claim, she has tendered back the money paid to her and has now pending in the Federal Court in St. Louis, Missouri, a Motion to Set Aside the Dismissal of the case and to reinstate it on its docket.

Wherefore, petitioner prays an order of this Court [fol. 560] setting aside and holding for naught the order of

this court of November 30th, 1937, wherein petitioner was granted authority to settle her claim against the Southern Railroad Company for the wrongful death of her husband.

(Signed) MARY STEWART,  
Administratrix.

Subscribed and sworn to before me this 8th day of December, 1937.

(Seal) (Signed) MAX C. NELSON,  
Notary Public.

My commission expires January 7, 1938."

(On the back of said Defendant's Exhibit 5 appears the following words and figures:)

"Dec. 10, 1937. Hearing on within petition set for January 7, 1938 9 A. M. Clerk to send notice.

(Signed) PAUL H. REIS,  
Judge.

In the Probate Court of St. Clair County, Illinois.

In the matter of the Estate of John R. Stewart, Deceased. Filed Dec. 10, 1937 L. O. Reinhardt, Probate Clerk. Petition for setting aside order authorizing settlement."

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(Defts. Exb. 6, 6/9/39 CPA)

"Docket of the Probate Court of St. Clair County, Illinois.

Attorneys. Classin. Parties In the Matter of the Estate of John R. Stewart, Deceased, Mary Stewart, petitioner. Docket entries. Date 16 April Term A. D. 1937. Proof of death duly made, Petition of Mary Stewart for letter of administration to issue to the petitioner presented. Proof of heirship duly made, Court finds that deceased left sur-[fol. 561] viving him Mary Stewart his widow Clarence Stewart, Minnie Ham, Roland Stewart his children as his sole and only heirs at law.

Ordered that letters issue to the petitioner upon filing her oath as administratrix and bond in the sum of \$1000.00.



Oath and bond filed. Bond approved and appointment made. Adjustment to the June Term A. D. 1937.

November Term A. D. 1937.

30 Petition of the administratrix for authority to compromise for claim of wrongful death of deceased presented.

Ordered that administratrix be authorized to compromise claim as per written order on file. Record 62 Page 96

December Term, A. D. 1937. Record 62 Page 531

10 Petition of Mary Stewart to set aside order on compromise presented. Hearing on petition set for January 7th, 1938, 9 A. M. clerk to notify petitioner.

January Term A. D. 1938. Record 62 Page 562

31 Petition of the Southern R. R. Co. to intervene in the motion heretofore filed in behalf of Mary Stewart administratrix, to set aside settlement for wrongful death of the deceased. Motion granted. Motion of Mary Stewart to set aside approval of settlement for fatal injuries to her decedent denied. Record 63 page 52."

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(Defts. Exb. 7 6/9/39 CPA)

"In the Probate Court of the County of St. Clair, State of Illinois.

In the Matter of:

The Estate of John R. Stewart, Deceased.

And now comes the Southern Railway Company, a corporation, by Phillip G. Listeman, its attorney, and respectfully moves the Court that it may be permitted to intervene and become a party to the hearing on the motion by Mary Stewart, administratrix of said estate, to set aside order of this Court entered on November 30, 1937, approving settlement of her suit against the Southern Railway Company, and authorizing the dismissal of the same in the District Court of the United States for the Eastern District of Missouri, and in support of this motion Southern Railway Company says:

That said motion involves the question of whether or not an order of this Court authorizing and directing said Mary Stewart, as Administratrix as aforesaid, to settle her suit against the Southern Railway Company on account of fatal injuries received by her husband and intestate while employed by the Southern Railway Company, and the dismissal of the suit brought by her as administratrix against the Southern Railway Company, in the District Court of the United States for the Eastern District of Missouri, to recover damages on account of the same, be set aside.

Southern Railway Company avers that it has paid the amount of said settlement and taken a release from the said Mary Stewart, Administratrix as aforesaid, and has, in all respects, complied with the provisions of the order of this Court on November 30, 1937, aforesaid.

Southern Railway Company further says that the hearing, order and judgment on said motion may affect an interest or title which it has, namely, its interest or title in the settlement made as aforesaid, the release executed by [fol. 563] the said Mary Stewart, as Administratrix as aforesaid, in accordance with the said order of this Court, and the payment of the money by the Southern Railway Company to her.

Southern Railway Company, therefore, represents under Section 25 of the Civil Practice Act of the State of Illinois that it has an interest or title, as above set forth, which the judgment and order of this Court on said motion may affect, and it, therefore, asks under said Section 25 of the Civil Practice Act for permission of this Court to intervene upon the hearing of this motion, and to be made a party thereto.

All of which is respectfully submitted.

SOUTHERN RAILWAY COMPANY,  
By (Sgd.) Philip G. Listeman."

"State of Illinois,  
County of St. Clair—ss.

H. B. Haun, being first duly sworn on his oath, deposes and says that he is Claim Agent of the Southern Railway Company, having jurisdiction in the County of St. Clair

in the State of Illinois, and other counties in Illinois, Indiana and Missouri; that he has full knowledge of the facts set forth in the foregoing petition and that he is authorized to make this affidavit. That he has read over the above and foregoing petition and is fully acquainted with the facts set forth therein, and that the facts set forth therein are true and correct as therein stated.

(Signed) H. B. HAUM.

[fol. 564] Subscribed and sworn to before me this 31 day of January, A. D. 1938.

(Signed) L. O. REINHARDT,

Probate Clerk.

By (Sgd) E. C. Shobart,  
Dpy."

(On the back of said Deft. Exb. 7 appears the following)

"Estate of John R. Stewart. Petition of Intervention of Southern Railway Co. Filed Jan 31, 1938. L. O. Reinhardt, Probate Clerk."

(Defts. Exb. 8, 6/9/39 CPA)

"Chestnut 5838 Charles P. Noell, Attorney and Counselor at Law Suite 1502 Telephone Bldg., St. Louis

December 8, 1937.

Leonard O. Reinhardt,  
Probate Clerk,  
Belleville, Illinois.

Dear Sir:

Enclosed please find Petition, which you will kindly file in the matter of the Estate of John R. Stewart.

Please call this to the attention of Judge Reis, and oblige.

Very truly yours,

(Sgd) CHAS. P. NOELL,  
Charles P. Noell."

CPN:JG

(On the back of said Deft. Exb. 7 appears the following)  
10 1937 L. O. Reinhardt Probate Clerk."

(Defts. Exb. 9 6/9/38 CPA)

"In the Probate Court of the County of St. Clair, in the State of Illinois.

[fol. 565] In the Matter of:

The Estate of John R. Stewart, Deceased.

E. C. Schobert, being duly sworn, upon his oath deposes and says that he is and for more than one year last past has been the duly appointed, acting and qualified Deputy Clerk of the Probate Court of the County of St. Clair in the State of Illinois; that on the 30th day of November, A. D. 1937, as such Deputy Clerk as aforesaid, and acting for and on behalf of the Probate Clerk of said County and as his deputy, as aforesaid, in compliance with the order of this Court on that day entered in the above entitled cause, he did send by United States mail to Charles F. Noell at 1502 Telephone Building, St. Louis, Missouri, a certified copy of the order of said Court entered in said cause on the said 30th day of November, A. D. 1937. That said certified copy of said order was placed by this affiant in an envelope, which was duly sealed and then addressed to the said Charles P. Noell at 1502 Telephone Building, St. Louis, Missouri, and sufficient amount of United States postage was placed on the same for the sending of the same through the mail as a registered letter, with a return receipt requested; and the said envelope so addressed and stamped, as aforesaid, containing said certified copy of said order of this Court, as aforesaid, was deposited in the United States mail by this affiant on the said 30th day of November, A. D. 1937.

Affiant further says that afterwards he received the re-[fol. 566] turn receipt for such registered letter, which return receipt so received by him through the United States mail is attached hereto and made a part of this affidavit.

And further this affiant saith not.

(Signed) E. C. SCHOBERT.

Subscribed and sworn to by the said E. C. Schobert this 10th day of December, A. D. 1937.

(Signed) L. O. REINHARDT,  
Probate Clerk."



(On the back of said Defts. Exh. 9 appears the following:)

“Estate of John R. Stewart, dec’d. Affidavit of mailing of notice to Chas. P. Noell. Filed Dec. 10, 1937. L. O. Reinhardt, Probate Clerk.

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On the ground with respect to Exhibits 4, 5, 6, 7, 8 and 9, and each of them, that the Probate Court of St. Clair County, Illinois, though a Court of limited jurisdiction, had jurisdiction to grant letters of administration and to settle the estate of a decedent and a resident of said County who died as a result of an accident in that county, and that said Court had an inherent authority to grant the petition to settle the claim; and that a direct attack was made before and denied by said Probate Court; and on the further ground that this action is a collateral attack on the order and judgment of the Probate Court of St. Clair County, Illinois, and that the only way the order and judgment of the Probate Court of St. Clair County, Illinois, in this case may be set aside is to bring an action, or move to set the same aside in the proper tribunal, or court. That this could only be done by a motion in said Probate [fol. 567] Court, or by a direct proceeding to set the same aside; and on the further ground that under Article IV, Section 1 of the United States Constitution full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and this includes the United States and its Courts; that judgments of Courts, State and National, may not be re-examined on their merits and may not be impeached for fraud or duress in obtaining them unless a direct proceeding to set the same aside, if rendered by a Court having jurisdiction of the case and the parties; that judgments of State Courts are not subject to collateral attack in Federal Courts; that Courts of concurrent jurisdiction cannot set aside or modify the orders and decrees of other courts of like jurisdiction; and that judgments rendered by a Court of competent jurisdiction cannot be collaterally attacked on the ground that they are obtained by fraud, or duress.

## XXIII.

The United States District Court erred in admitting in evidence the testimony offered by plaintiffs witness, Mary Stewart as follows:

"Q. Now, did you learn from Mr. Hamm that he had had a talk with Mr.—

A. Mr. Howell.

Q. Mr. Howell?

A. Yes, sir. He had been called to the office.

Q. What did Mr. Hamm say to you?

Mr. Davis: Now, we object to that, Your Honor. We are not bound by anything that Mr. Hamm said.

Mr. Sheppard: It is hearsay besides.

The Court: Overruled.

[fol. 568] To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Davis: And it is hearsay, besides it is self-serving.

Mr. Hay: I do not see or think that it needs any argument to show the admissibility of this, Your Honor. Mr. Hamm had been called in as testified to by Mr. Howell, for the express purpose of having him see if he could not accomplish a settlement of this case, and pursuant to that—

The Court: I passed on it. Go ahead.

Mr. Hay: I beg your pardon.

Q. What did Mr. Hamm say?

A. They had called him to the office to see Mr. Howell, and Mr. Howell asked him about this case. He said he did not know there were a case of that kind.

Q. That Mr. Howell said he did not know?

A. No, not until he told him, and he said that he had been notified to see if he could not urge the case along, and get me to take that amount of money, and he said he did not know him, and he did not want to, you know, to urge him, but he said just to see if he could not talk me into taking that amount, and then he told him to go and talk to Mr. Campbell.

Q. Did he say he had talked to Mr. Campbell?

A. He had to, yes. He said, 'You go, I would advise you to go'.

Q. What else did Mr. Hamm say?

A. Well, it meant his job, so he better go.

Mr. Davis: He said what?

[fol. 569] A. It meant his job, and he had better go.

Q. And what did he say to you with respect to the settlement of the case, Mr. Hamm I am referring to?

A. Well, he said that he would not get it through the attorney, and that that might mean his job, and I better go see, he better go see the attorney, Mr. Campbell.

Q. Well, what effect did that have on you?

Mr. Davis: Well, we object to any effect it had on her.

Mr. Hay: That is the whole gist of this case, Your Honor.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

A. Well, Mr. Hamm said that they was not hiring men his age, or from his age to thirty years, and he might lose his job.

Q. Well, what did you say, or what was the effect on you?

A. Well, I know he had been working for the company a long time, and if he would lose his job he might not get another one, and he had a family, a wife and two children to keep.

Q. Now, up to that time, Mrs. Stewart, had you ever indicated to anybody anywhere that you would take five thousand dollars? A. No time.

Q. After Mr. Hamm told you that, what was your attitude toward the taking of the five thousand dollars?

A. Well, I was very worried, and at the time I thought well, he, if he would lose his job, they would suffer, and that is what I told him, that he would lose his job, he might [fol. 570] not get any more, and I was told by Mr. Wiechert, that it had been done, he could lose his job.

Q. I see. Was that after you had—

A. After I had the talk with Mr. Hamm and went to Mr. Campbell's.

Q. Oh, I see. Now, pursuant to this talk with Mr. Hamm, you then went to the office of Campbell & Wiechert?

A. Yes, sir.

Q. And you say that at that time Mr. Wiechert said to you, when reference was made to the possibility of Mr. Hamm losing his job, that that had been done?

A. It had been done, it could be done and it had been done.

Q. Who was present when that conversation took place?

A. Well, my daughter and Mr. Felsen, and I think Mr. Haun.

Q. Felsen, is that the lawyer that—

A. That was the attorney.

Q. That Mr. Campbell called in to— A. Yes, sir.

Q. Just a moment. Mr. Felsen, is that the lawyer that Mr. Campbell called in to represent you? A. Yes, sir.

[A.] And this took place in the office of Campbell & Wiechert, the attorneys for the Southern Railroad Company? A. Yes, sir.

Q. Had you ever been in that office before?

A. Never.

[A.] Had you ever seen either Campbell or Wiechert before?

A. I had seen Mr.—no, I don't think I had seen Mr. Wiechert. I seen Mr. Felsen, but not Mr. Wiechert.

[fol. 571] Q. Mr. Felsen, you mean, came to see you with a Mrs. Pouch? A. Yes, sir.

Q. Before you hired a lawyer, is that right?

A. Yes, sir.

Q. All right. Now, after these conversations with Mr. Hamm and with Mr. Wiechert, what did you do?

A. How?

Q. What did you do after these conversations with Mr. Hamm and Mr. Wiechert, I mean with respect to agreeing to take five thousand dollars?

A. Well, I was just to where I did not know what [do] do, and the more I studied, I thought of those children that would suffer, you know, and if he would lose his job I knew they would suffer, and I took the money.

Q. You took the money?



A. When he said I would get it no other way.

Q. Now, it was after these conversations?

A. Yes, sir.

Q. That all these papers were—

A. Were made out when I got there.

Q. May I ask, were the papers already made out when you got there? A. Yes, sir.

Q. But it was after that that you agreed to take the money, and then went over to Belleville and went through the form of a settlement? A. Yes, sir.

Q. I see. And it was after that that you signed the release, was it? A. Yes, sir.

[fol. 572] Q. Up to that time had you signed anything in connection with the settlement?

A. I don't think I had.

Q. Had you agreed with anybody to take five thousand dollars until after the talk with Mr. Hamm and Mr. Wiechert? A. No, sir.

Q. Had you ever indicated to anybody that you would take five thousand dollars? A. No, sir.

Q. Was five thousand dollars as much as you thought you ought to have? A. Why, certainly not.

Q. The doctor was on the stand yesterday, and he testified that you had said to him when he came into the hospital to see your husband, that he had been on a drunk for three or four days.

A. I do not see how he could be on a drunk when we hunted a house and moved, and straightened our things. A man drunk could not do that, I don't think.

Q. Did you make any such statement as that, to the effect— A. No, sir.

Q. Did you ever make a statement to him about his being drunk any time, make the statement to this doctor?

A. No, sir.

Q. Did you ever make a statement to him?

A. No, sir.

Q. Your husband did drink liquor?

A. Oh, about like ordinarily a man would drink.

Q. Do you know of any time of his being what you would call drunk?

A. I never seen him when he could not get around or [fol. 573] do anything he wanted to do at no time.

Q. He worked, as you testified before, fairly regularly, did he not? A. Regular, yes, sir.

Q. I believe something during the year before he was killed he had something like poison ivy on him?

A. Well, Doctor Thie at the Missouri Pacific [—] something known as a child disease or breaking out. I had it first on my hand, and I went to the doctor, and he gave me a prescription, and I went back for him.

Q. Was that during the last year of his life?

A. Yes, sir, the summer before.

Q. Did he lose some time as a result of that?

A. Yes, sir.

Q. Now, in the years before that, had he lost any time on account of such a thing as that ivy, mentioned?

A. Well, he had been a steady worker.

Q. I see. A. Yes, sir.

Q. And I believe you testified that he turned over, ordinarily turned over his pay check to you?

A. Yes, sir.

Q. And out of that you were supported and the family was supported? A. Yes, sir.

Q. I mean you and he were living together?

A. Yes, sir.

Q. Now, you say that during the years preceding this last year when he had this trouble, you say he worked steadily?

A. Yes, sir.

Q. Would you say he worked more or less steadily or [fol. 574] otherwise than the last year of his life?

A. Sure, he has worked of course not the last year or two, but he has worked most every day. But the last year or two he figured that he should give some of the other men a break several days at a time.

Q. And when he laid off the extra man would get the opportunity to work? A. Sure.

Q. I believe you stated that at the time of his death he was in good health?

A. Yes, sir. He was never sickly, he was never a sickly man at no time.

Mr. Hay: That is all.

Mr. Sheppard: Your Honor, just to keep our record straight, may we move to strike all the testimony with re-

spect to what her son-in-law, Hamm, told her, first for the reason that it is hearsay; second, for the reason that there is no evidence showing that he had any authority to speak on behalf of the defendant in this case; and third, that it does not tend to prove any issue of fraud or duress.

The Court: Overruled.

Mr. Sheppard: Save an exception."

Found in the Reporter's Transcript of the testimony on pages 211 to 219 inclusive.

On the ground that defendant is and was not bound by anything that Mr. Hamm said and that his testimony is and was hearsay and self-serving, and defendant was not bound by any affect it had on plaintiff, and on the ground that there is and was no evidence showing that Hamm had any authority to speak on behalf of the defendant in this case to plaintiff and it does not tend to prove any issue of fraud or duress.

[fol. 575]

#### XXIV.

The said United States District Court erred in admitting in evidence the testimony offered by plaintiffs witness, Mary Stewart, as follows:

"Q. How many children have they?

A. They have two.

Q. How old are they?

Mr. Davis: Well, that is objectionable, Your Honor. It is absolutely immaterial.

Mr. Hay: Well, I do not think it is, Your Honor.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. How old are they?"

Found in Reporter's transcript of the testimony on page 245.

On the ground that it was immaterial as to whether Mr. and Mrs. Hamm had any children.

## XXV.

The said United States District Court erred in admitting in evidence testimony offered by plaintiffs witness, Minnie Hamm, as follows: &

"Q. Just tell us what was said in that conversation?

Mr. Davis: Now, Your Honor, we think that that, anything of that nature is self-serving. It is hearsay.

The Court: What conversation is this?

Mr. Davis: This is the conversation that Mrs. Hamm, Mrs. Stewart had with Hamm.

Mr. Hay: It was after the visit to Mr. Howell.

Mr. Davis: It is self-serving, may I say, and hearsay, and then there was nothing in that conversation that he related to her with Judge Howell that could possibly affect this case in any way.

[fol. 576] The Court: Well, of course, there is only one theory on which it is admitted. I admitted it on that theory.

The objection is overruled.

Mr. Davis: It undoubtedly could, Your Honor, if there was anything said, but there was nothing said.

The Court: I think it is justified. The objection is overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Go ahead.

A. What was the question, please?

Mr. Hay: Read the question.

(Question read.)

Q. That is the conversation between Mr. Hamm and your mother with respect to what had transpired between Mr. Howell and Mr. Hamm.

A. Well, he related just the conversation as near as he could recollect it, that had gone on in Mr. Howell's office.

Q. Give us as near as you can what he told your mother.



A. Well, he told, that he had been called over to the Legal Department, and that it is not ordinarily done.

Mr. Davis: Now, wait. Did he tell her it was not ordinarily done?

A. Yes, sir. It was out of the ordinary, and that he knew it had a meaning behind it, and he asked Mr. Howell just what he wanted to see him about, and he said, well, it was pertaining to his mother-in-law's case, he said he had not known there was a case.

[fol. 577] The Court: Now, don't say 'he'.

Mr. Hay: Mr. Howell.

The Court: You confused it. Call names.

A. Mr. Howell told him that he had not known about it until he had been informed about it, by Mr. Campbell and Mr. Haun, and Mr. Haun's card was on the desk at the time. He handed it to my husband and he said it would be very good if he settled this thing.

The Court: Who said that?

The Witness: Mr. Howell. Beg pardon.

The Court: Told your husband?

The Witness: Told my husband, yes, told him it would be good if he would do his very best to settle the case, and since he had put himself in the thing, his own interest, my husband knew there was only one thing it could mean, was business.

Mr. Davis: I move that that be stricken out.

The Court: Sustained.

Mr. Hay: You understand, under the rules of evidence we have to eliminate certain things.

Q. Tell us what Mr. Hamm said to your mother, not what you thought about what Mr. Hamm said to your mother.

A. He told my mother it could only mean business, that they did not fool around inviting fellows over from work like that to have conversations with them, and that they did not have to make a threat, their being interested in it was enough, and when they suggested—

Mr. Sheppard: Just a moment. We move to strike that out, Your Honor, first (because it is not responsive to the [fol. 578] question. That is not what Mr. Howell said at all.

The Court: Let counsel make his objection.

Mr. Sheppard: First, because it is not responsive to the question for the reason that she is not telling what her husband said Mr. Howell said, she is telling what her husband told her mother; she is filling in the matter which is wholly incompetent in this case. It does not tend to prove fraud, duress or anything else, except how he felt about it, and deductions he drew from what had transpired previously. That certainly is as far from competent testimony as one could imagine.

The Court: I do not know. It seems to me if this testimony is competent at all it probably makes it all competent.

Mr. Hay: Yes.

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Q. Go ahead.

The Court: It is now time that we recess, Mr. Hay. Announce a recess until 2:00 o'clock.

At this point 12:30 p. m., a recess was had until 2:00 p. m.

After recess, at 2:00 o'clock p. m., Monday, June 12, 1939, the following proceedings were had:

The Court: Proceed, Gentleman.

#### Direct Examination, Resumed.

By Mr. Hay:

Q. Mrs. Hamm, when we adjourned at recess I had [fol. 579] asked you to relate the conversation between your mother and Mr. Hamm following his visit to the office of Mr. Howell, and Mr. Campbell. Now, will you proceed and relate anything additional that was said during that conversation?

A. Well, since she had not been home when he had gone to Mr. Howell's office, he told her that he had gone

there, and that he and Mr. Howell had talked, and I won't need to tell the conversation, shall I, that was carried on in Mr. Howell's office?

Q. I want you [—] tell as fully as you can.

A. Well, he repeated that to my mother. Shall I state that?

Q. Now, understand, Mrs. Hamm, what I want is what was said between Mr. Hamm and your mother, not anything you thought about it, or who thought, but what was said. Just go ahead and relate all that you can recall of that.

A. He told her he had gone to Mr. Howell's office, and that he had asked him about my mother's case with the Southern, and he would like that my mother settle this matter; and my husband told my mother that it would be a very good thing to do because him being called in there, it seemed that his company's interest was aroused towards this thing, and it would be the best thing concerning my husband's position to have her go down and settle the thing; that this wire had been sent to my husband which connected him more than ever with it, so he thought that was the only, rather he told her that was the only thing to do, since he was concerned in it, and she and I both thought it was too, regardless of what the terms might be, when we got there. We all went down there then.

Q. Then you went down to the office?

[fol. 580] A. Yes, sir.

Q. Of Mr.— A. Campbell.

Q. Campbell?

A. He was not present, but Mr. Wiechert had his position in the—

Q. Now, something was said here about your having been at the office of Mr. Campbell before that. Had you?

A. Yes. After we received this telegram, it was impossible to get her there at the date set, and after all it was Thanksgiving Day, the date mentioned on the telegram, the 27th of November, I think it was.

Q. Yes.

A. And so I went down to tell Mr. Campbell that she would not be able to be there, and of course, I do not remember if I even talked to him, I think I just talked to the girl in the outside office, and she, of course, told him.

Q. Now, you went with your mother at the time she went to the office of Campbell and Wiechert?

A. Yes, sir.

Q. Pursuant to this telegram? A. Yes.

Q. And who else was with you?

A. My husband and my mother.

Q. Now, will you just tell the jury what occurred at that office, as nearly as you can recollect it?

A. When we got there Mr. Campbell was not there again, so we saw Mr. Wiechert, who seemed to have all the things prearranged, and Mr. Haun came in directly, and we went over this thing in general, I mean it was all explained, just what my mother was to do, and the papers were shown her that she probably don't remember just everything she read. I wouldn't either, and I think they were all passed around for my husband and myself to read, [fol. 581] too. But that did not seem to interest me so much, because the settling of the deal was the main object that I was there for; and then they—let's see, Mr. Haun came in, of course, he was there, then they suggested that she have this representative for the thing, which was necessary, and not knowing any attorneys outside of her own, why they suggested Mr. Felsen, and he was directly brought in by Mr. Haun, then this thing was reread aloud by Mr. Felsen.

After that, we talked about what my husband would have, the connections he had in the thing, of course, it was nothing to him really, but he was brought into it, and we talked over that.

Q. What was said about that?

A. Well, I brought up the subject myself. I said it just did not seem fair to bring someone else into it, like my husband and myself, where it was really my mother's own, her case, and her ideas and things, what to do, what she thought best. In cases like that people generally do not give their opinion because it may be wrong, and they are to blame.

So I said I could not see where it was fair to bring my husband and his job into it. A job meant a lot to anyone of our age, especially after he had the seniority he did, and Mr. Wiechert said it could be done and had been done; and we did know of case where it had been done. So then we proceeded—



The Court: Is that the exact language that he used, it could be done?

A. It could be done and it had been done, yes, sir.

The Court: Is that the exact language he used?

[fol. 582] A. Yes.

Q. Now, what brought forth that remark, what was said by you or anyone else to lead up to his saying it could be done and it had been done?

A. Well, I said it just did not seem fair, that there was no necessity, or need for my husband being brought into it, and I could not see why they could bring someone else into it, but knowing that my husband's job would be on the scale—just like the man on the jury yesterday, he was dismissed because he could not give his own opinion, it meant something, he could not express, he could not give his own ideas what it meant because it would be threatening his job.

Q. Now, had your husband as well as you and your mother discussed the possibility of his losing his job?

A. Yes, sir. That had been the main theory.

Mr. Davis: We object.

The Witness: In the thing.

Mr. Davis: Your Honor, unless there is some evidence we are responsible for it in any way. I do not think there is any evidence here we are responsible for it.

The Court: Overruled.

Mr. Davis: There is certainly nothing in Judge Howell's testimony of anything that they testified to.

Mr. Hay: There is certainly evidence here—

The Court: Overruled.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted.

Mr. Hay: All right.

[fol. 583] Q. Just what had been said between your husband and your mother and yourself when you went, when you talked about the possibility of his losing the job?

A. Well, after he was brought into it by going to Mr. Howell's office, it just seemed that the main interest was centered on him then, it seemed the last remark, or something, nothing else had moved the thing or put it in their direction."

Found in Reporter's transcript of the testimony on pages 297 to 306 inclusive.

On the ground that it was and is hearsay and self-serving and there was nothing in Hamm's conversation with Mr. Howell that could possibly affect the issues in this case in any way, and on the ground that it does not attempt to prove fraud, or duress, and that witness was relating hearsay, that of what Hamm said to Howell and Howell to Hamm.

## XXVI.

The said United States District Court erred in refusing to admit in evidence testimony offered by defendant on cross-examination of plaintiff's witness, Mary Stewart, as follows:

"Q. How much have you used?

Mr. Hay: We object to that, Your Honor.

The Court: Sustained.

Mr. Davis: Your Honor, that shows ratification.

Mr. Sheppard: Let us make our offer of proof.

(Thereupon, out of the hearing of the jury, the following offer of proof was made:)

Mr. Sheppard: Defendant offers to prove by the plaintiff, who is now on the witness stand, just the amount of money which she has used of this five thousand dollars, and because defendant does not know the amount defendant requests permission to make this offer of proof by [fol. 584] questions and answers to the witness outside the hearing of the jury.

The Court: As I recall this testimony, she made a tender, and it was refused.

Mr. Sheppard: Yes, sir. No question about it.

Mr. Hay: We object to it.

The Court: Sustained.

Mr. Sheppard: Will Your Honor permit us to ask these questions and answers for the purpose of showing how much—we do not know. We can't put that in our offer. I mean out of the presence of the jury, just a proof, offer of proof.

The Court: Very well. I do not see the occasion of examining the witness out of the presence of the jury. I thought there were some questions you wanted to ask for the purpose of making your record.

Mr. Sheppard: It is to show how much she spent.

Mr. Hay: Our point is that is wholly immaterial, not in issue in this case.

Mr. Sheppard: I know it is, but our point is it is mighty material. We have a right to show how much she used and at what times.

The Court: If I sustain an objection I am not going to let you go ahead and develop the same facts after I have made a ruling.

Mr. Sheppard: I mean out of the hearing of the jury.

The Court: I don't care if it is out of the hearing of the jury or out of the hearing of the court. I do not think you are entitled to that. I do not think it is—there is testimony here that she made a tender and that you declined it, and I do not see that you have any right to show what she has done with the money after that.

Mr. Sheppard: I understand that perfectly, but we disagree with you. I want to make our offer of proof, that is all, and we cannot state to you how much she spent, because we do not know.

Now, we want to ask her out of the presence of the jury and for the purpose of our proof, how much she spent,

and how much she has left as part of the offer of proof, that is all.

Mr. Hay: I do not see how that could possibly affect their case. If they are entitled to show this, they are entitled whether they know the amount or do not know the amount.

Mr. Sheppard: The Court has already ruled whether we are entitled to show it. All we are asking is to get our proof in the record.

The Court: Are you objecting, Mr. Hay?

Mr. Hay: I am.

The Court: Sustained.

Found in the Reporter's transcript of the testimony on page 321 to 323 inclusive.

To which ruling of the Court, the defendant, by its counsel, then and there, at the time, duly excepted."

On the ground that the offer of proof in cross-examination would show, or tend to show that plaintiff ratified the release.

## XXVII.

The said United States District Court erred in refusing to order a mistrial of said cause when the following occurred in the proceeding:

[fol. 586] "Q. Will you look at this jury, look at them, and tell us this jury on your oath, that the reason you did that was your interest in this woman? Look over and tell them.

A. It was the interest of Mrs. Steward and the Southern Railway, our mutual interest.

Q. Oh! And in the interest of Mrs. Stewart and the Southern Railway, you got Mr.—this bird over here—

Mr. Sheppard: Now, Your Honor, we object to that remark.

The Court: Sustained.



Mr. Sheppard: And ask that counsel be rebuked, and I think, Your Honor, we will move for a mistrial. That is not the first time that occurred in this record.

The Court: Overruled, proceed.

Mr. Sheppard: Exception."

On the ground that the action of plaintiff's attorney was improper and was intended and did inflame the jury.

## XVIII.

The United States District Court erred in refusing to sustain defendant's motion for judgment notwithstanding the jury verdict or for a new trial. Omitting caption and signatures said motion reads:

Comes now the defendant and moves the court to set aside the verdict herein and any judgment which has been rendered pursuant thereto, and notwithstanding said verdict, to have judgment entered for defendant in accordance with its motion for a directed verdict filed herein and presented to this court at the close of all the evidence in this case, upon each and every ground set forth in its said motion for a directed verdict.

Defendant further prays in the alternative for a new trial if the court should refuse to set aside the verdict and judgment herein and to enter judgment in accordance [fol. 587] with its motion for a directed verdict as last above prayed. As grounds for said new trial defendant states:

### I.

The verdict of the jury herein is not supported by any competent and legal evidence.

### II.

The release executed by the plaintiff is binding upon her and there is no evidence showing that any fraud or duress entered into the execution thereof.

### III.

The record and proceedings of the Probate Court of St. Clair County, Illinois, introduced in evidence, which disclose that plaintiff made application to such Court for

authority to execute the aforesaid release and received authority so to do, together with the order of said Court retaining jurisdiction over the matter constitute a final judgment unappealed from and which cannot be collaterally attacked in the trial of this case. The judgment and action of the Probate Court are binding upon plaintiff whereby she had and has no authority or right to attack in this action the release pleaded in bar hereof.

#### IV.

The court erred in admitting incompetent, irrelevant, improper and prejudicial evidence offered by plaintiff and objected to by defendant.

#### V.

The court erred in refusing to admit competent, relevant and material evidence offered by defendant.

[fol. 588]

#### VI.

The verdict by the jury is excessive and so excessive as to indicate that it resulted from passion and prejudice on the part of the jury against defendant.

#### VII.

The verdict of the jury is so indefinite as to be a nullity; for the reason that it cannot be determined whether the intention of the jury was to render a verdict in favor of plaintiff for the sum of \$17,500.00 less the sum of \$5000.00 which plaintiff had already received from defendant; or whether the verdict was to be in the sum of \$17,500.00, exclusive of the \$5,000.00 payment which had already been made by defendant to plaintiff.

#### VIII.

The Court's charge to the jury is erroneous in each and every particular pointed out by defendant and included in defendant's objections and exceptions to the charge, made at the close of its delivery by the court and before the jury retired to consider its verdict. Each objection and exception to said charge is separately assigned as error.

## IX.

The court erred in failing and refusing to give to the jury each and all of the instructions on the merits, requested by defendant at the close of all the evidence marked Instructions A to U, both inclusive; for the reasons assigned by defendant to the Court's refusal to give said instructions, immediately subsequent to the court's charge to the jury herein. The refusal of each of said instructions is separately assigned as error.

## X.

The court erred in overruling and denying defendant's motion for a directed verdict offered at the close of and [fol. 589] of its evidence in the case.

## XI.

There is no substantial evidence in this case proving or tending to prove that the defendant was guilty of a violation of the Safety Appliance Statute of the United States as alleged in the petition.

On the grounds,

No. 1. That there was and is no substantial evidence adduced in this case showing, or tending to show that defendant herein was, or is guilty of actional negligence, or want of duty charged in the petition.

No. 2. There was and is no substantial evidence adduced in this case that any actionable negligence, or want of duty whatever of defendant was or is the direct and proximate cause of the fatal injuries received by plaintiff's intestate as charged in the petition.

No. 3. There was and is no substantial evidence whatever in this case showing, or tending to show any violation of any duty as charged in the petition.

No. 4. That plaintiff can not recover in this case because all the substantial evidence herein unequivocally shows that plaintiff, as administratrix, petitioned the Probate Court of St. Clair County, Illinois, to settle her claim against defendant, as such administratrix, for Five Thousand Dollars, and that upon her petition the order was granted and that she settled and released her claim as

such administratrix for Five Thousand Dollars, and the said Five Thousand Dollars was paid her as such administratrix, and that she received and accepted the same in settlement thereof, and that thereafter she filed a petition in said Probate Court to set aside the settlement, which the said Probate Court denied; and that this cause is a collateral attack on the said orders and judgment of the [fol. 590] Probate Court of St. Clair County, Illinois, of which matters said Probate Court had full jurisdiction.

No. 5. That there was and is no substantial evidence in this case showing, or tending to show that the defendant, its servants or agents was or is guilty of any actionable negligence or fraud whatever.

No. 6. That there was and is no substantial evidence in this case showing, or tending to show that defendant was or is guilty of any actionable duress whatever.

No. 7. That there was and is no substantial evidence in this case impeaching, or intending to impeach the execution by plaintiff of the release in evidence in this case.

No. 8. That there was and is no substantial evidence in this case showing, or tending to show any fraud, or duress whatever in the execution of the release, or that plaintiff at the time she executed the release did not know that she was executing a full release discharging defendant from all claims.

ARNOT L. SHEPPARD,  
WALTER N. DAVIS,  
WILDER LUCAS,

Attorneys for Appellant Defendant.

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Copy of above received this Sept. 20, 1939.

CHAS. P. NOELL,  
HAY & FLANAGAN,  
Attorneys for Plaintiff.

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[fol. 591] (Designation of Matters to be included in  
Transcript on Appeal.)

(Filed September 20, 1939.)

The clerk will include in the transcript of the appeal in the above entitled cause the following:

1. Plaintiff's petition filed, the date thereof, the summons and showing date returnable.

2. Marshal's return to summons, and date of return.

3. Defendant's second amended answer to plaintiff's petition filed and date of filing.

4. Plaintiff's reply filed to defendant's second amended answer and date of filing.

5. Order and entries of record showing trial of said cause on June 8, 9, 10, 11, 12 and 13, 1939. Submission of cause to jury, verdict of jury, and the judgment of June 13, 1939 appealed from, all at the March Term, 1939 of said District Court.

6. Defendant's motion for a new trial filed or motion for judgment notwithstanding verdict and date of filing.

7. Entry of record showing defendant's motion for judgment notwithstanding the verdict or for motion for a new trial submitted to court and the date thereof.

8. Order of District Court showing motion for judgment notwithstanding the verdict or motion for a new trial overruled and the date same was overruled.

9. Defendant's notice of appeal filed and the date of the filing.

10. Supersedeas bond filed, the date filed and the order of court approving bond and date approved.

11. Record entry and date thereof showing defendant filed two copies of evidence and proceedings stenographically reported in District Court.

12. Defendant's transcript of the evidence and proceedings, the date of filing and service upon plaintiff or his attorneys.

13. Defendant's statement of points filed in District Court, record entry and date thereof.

14. Defendant's designation of contents of record on appeal and date of filing same.

15. The praecipe of May 26, 1939 for subpoena for Henry Hamm filed and issued.

16. The District Court's order of June 22, 1939 entered staying execution of judgment until ten days after overruling defendant's motion for judgment notwithstanding the verdict or motion for a new trial.

17. The District Court's order of June 24, 1939 amending order of June 22, 1939 granting defendant a stay of execution on judgment until the expiration of thirty days after the ruling of the court on defendant's motion for judgment notwithstanding the verdict or for a new trial in the event said motion is ruled upon adversely to defendant.

18. Order of court of June 9, 1939 overruling defendant's motion for a directed verdict at the close of plaintiff's case.

19. Order of June 19, 1939 overruling motion of defendant for directed verdict at the close of the entire case [fol. 593] and evidence.

Defendant desires said transcript for the clerk of the Circuit Court of Appeals and elects that the record in this cause be printed under the supervision of the clerk of said Court of Appeals.

ARNOT L. SHEPPARD,  
WILDER LUCAS,  
WALTER N. DAVIS,  
Attorneys for Defendant.

[fol. 594]

Clerk's Certificate.

United States of America,  
Eastern Division of the Eastern  
Judicial District of Missouri—ss.:

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the

Eastern Judicial District of Missouri Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except insofar as the same is restricted by the designation of the contents of record to be included in the transcript of record on appeal heretofore set out) of the record and proceedings in case No. 12154, Law, wherein Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased is plaintiff and Southern Railway Company, a corporation, is defendant, as fully as the same remains on file and of record in my office.

Seal  
U. S. District Court  
East. Div. of the  
East. Judic. Dist.  
of Missouri

In Testimony Whereof, I have here-  
unto subscribed by name and  
affixed the seal of said Court at  
office in the City of St. Louis, in  
said Division of said District this  
28th day of October, in the year  
of our Lord, Nineteen Hundred  
and Thirty-nine.

JAS. J. O'CONNOR,  
Clerk of said Court.  
By C. E. Rudolph,  
Deputy.

Filed Oct. 28, 1939, E. E. Koch, Clerk.

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[fol. 400] And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz.:

(Appearance of Counsel for Appellant.)

United States Circuit Court of Appeals  
Eighth Circuit

Southern Railway Company, a corporation, Appellant,  
No. 11,609. vs.  
Mary Stewart, Administratrix of the Estate of John R.  
Stewart, deceased.

The Clerk will enter my appearance as Counsel for the Appellant.

WILDER LUCAS,  
ARNOT L. SHEPPARD,  
WALTER N. DAVIS.

(Endorsed): Filed in U. S. Circuit Court of Appeals,  
Oct. 28, 1939.

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(Appearance of Mr. Charles M. Hay and Mr. Stewart D. Flanagan as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

CHAS. M. HAY,  
STEWART D. FLANAGAN.

(Endorsed): Filed in U. S. Circuit Court of Appeals,  
Oct. 31, 1939.

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[fol. 401] (Appearance of Mr. Charles P. Noell as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

CHAS. P. NOELL.

(Endorsed): Filed in U. S. Circuit Court of Appeals,  
Nov. 1, 1939.

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(Order of Submission.)

United States Circuit Court of Appeals  
Eighth Circuit

March Term, 1940.

Friday, March 15, 1940.

Before Judges Sanborn, Thomas and Van Valkenburgh.

Southern Railway Company, Appellant,  
No. 11,609. vs.

Mary Stewart, Administratrix, etc.

Appeal from the District Court of the United States for  
the Eastern District of Missouri.

This cause having been called for hearing in its regular order, the same was argued by Mr. Walter N. Davis and Mr. Arnet L. Sheppard for appellant, and by Mr. Charles M. Hay for appellee.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 402] (Order as to Substitution of Party Appellee.)

United States Circuit Court of Appeals  
Eighth Circuit

May Term, 1940.

Wednesday, July 24, 1940.

Southern Railway Company, Appellant,  
No. 11,609. vs.

Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased.

Appeal from the District Court of the United States for  
the Eastern District of Missouri.

A suggestion of death of the appellee in this cause was filed by counsel for appellant July 13, 1940, and on July 22, 1940, counsel for the respective parties filed a stipulation that Clarence A. Stewart, Administrator of the Estate of John R. Stewart, deceased, may be substituted as

appellee in lieu and instead of the appellee, Mary Stewart, Administratrix of the Estate of John R. Stewart, deceased, who died on the 8th day of July, 1940.

Accordingly, It is Ordered by this Court that said substitution of party appellee in this cause be, and is hereby, made.

July 24, 1940.

[fol. 403]

(Opinion.)

United States Circuit Court of Appeals  
Eighth Circuit.

No. 11,609.—OCTOBER TERM, A. D. 1940.

Southern Railway Company, a  
corporation,

Appellant,

vs.

Clarence A. Stewart, Adminis-  
trator of the estate of John R.  
Stewart, deceased,

Appellee.

Appeal from the Dis-  
trict Court of the  
United States for  
the Eastern Dis-  
trict of Missouri.

[November 1, 1940.]

Mr. Walter N. Davis and Mr. Arnot L. Sheppard (Mr. Wilder Lucas on the brief) for appellant.

Mr. Charles M. Hay (Mr. Charles P. Noell on the brief) for appellee.

Before SANBORN, THOMAS and VAN VALKENBURGH, Circuit  
Judges.

VAN VALKENBURGH, Circuit Judge, delivered the opinion of the court.

John R. Stewart, the deceased, was a switchman in the employ of appellant. February 12, 1937, he was engaged at East St. Louis, Illinois, in coupling up certain cars on track No. 12 in appellant's yards. Several of said cars contained goods which were en route in interstate commerce from various states of the United States to various other states of the United States. While engaged in such duties, Stewart's arm was crushed by impact between the couplers of two cars of the train. It was charged by appellee that he died on February 14, 1937 as a result of such injury.

The suit is based upon an alleged violation of the Safety Appliance Act, (Sec. 2 Act of March 2, 1893, C. 196, Sec. 2, 27 Stat. 531, as amended by Act of March 2, 1903, 32 Stat. 943, C. 976), and is brought under the Federal Employers' Liability Act, (45 U.S.C.A. Sec. 51).

Mary Stewart, plaintiff below, and the original appellee in this court, was the wife of deceased, and brought this suit April 20, 1937, to recover damages for the alleged wrongful death of the deceased as an employee of the appellant railroad, and also for his conscious pain and suffering proximately caused by the alleged violation by said appellant of the provisions of the Federal Safety Appliance Act, in furnishing on its line any car "used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars".

After the filing of the suit Mr. H. B. Haun, assistant general claim agent of the appellant Southern Railway Company, made a number of attempts, by personal contact and through others, at his request, to enter into negotiations for the settlement of this cause; and, during this period, amounts in settlement from \$1,000 to \$5,000 were tentatively offered to Mrs. Stewart, but not accepted. Finally, according to the testimony of Haun, he learned

that one Henry Hamm, the husband of a daughter of plaintiff, was, by his opposition, blocking the settlement. Hamm at that time was a switchman in the employ of the Terminal Railroad Association, which is owned by sixteen proprietary lines, of which appellant herein is one. The Terminal Association therefore readily accedes to all proper requests of the individual carriers. Mr. Haun testifies that when he learned of Mr. Hamm's attitude he called on Mr. J. L. Howell (now deceased), attorney for the Terminal Association, with offices at the Union Station in St. Louis, Missouri. To Mr. Howell, Haun testifies he said: "Mr. Howell, we oftentimes have cases where we have our own employees who are blocking these settlements. Here we have a case where we know that is what has happened, and I wish you would talk to Mr. Hamm about it". Mr. Howell then called up the east side office of the Southern Railway, where Hamm was employed, and requested that "they have Bill Hamm come in and see me at his first opportunity". When Hamm came in Howell referred to the death of the deceased, and the claim of the widow and said:

" 'They are offering to pay her five thousand dollars clear and she is willing to take it, but they say that you are standing in the way.'

'Yes', he said, 'I am, because I don't want that woman gypped out of what money she gets.'

I said, 'How about the five thousand dollars?'

He said, 'That is the reason; that is all right to settle for that, if she gets the five thousand dollars.'

I said, 'What would it take to convince you that she would get the five thousand dollars?'

'Well', he said, 'I want it put in writing.'

'Well, now', I said, 'they can't do that. Railroads don't do that, put things in writing like that. It is not right. If the Southern tells you that they will pay your mother-in-law five thousand dollars clear, you can depend on what they tell you.'



Well, he didn't know whether he could or not. I said, 'You know Bruce Campbell, don't you?'

He said, 'Yes, I do'.

I said, 'If Bruce Campbell tells you that they will see that your mother-in-law gets five thousand dollars clear, and they stand all other expense, would you not believe him?'

'Well', he said, 'I would rather it would be put in writing.'

I said, 'Would you believe me if I would tell you right now?'

'Yes, if you tell me that I will believe it.'

I said, 'Mr. Campbell will tell you the same thing'.

He said, 'If he will do that, that is all right.'

. . . . .

I turned around to my desk and called Bruce Campbell. I talked with Bruce Campbell and stated, in Mr. Hamm's presence, re-stated what I had already stated.

Mr. Campbell says, 'That is correct.' He said, 'Is Hamm there?'

I said, 'Hamm is right here now, listening, and Hamm says it is all right, that he thinks five thousand dollars is a reasonable settlement, if she gets that much money, and I have myself guaranteed him that she will get that, if you say so.'

He says, 'Why not have him come right up here?'

I said, 'That would be fine.'

I said to Hamm, 'Hamm, can you go right up to Mr. Campbell's office?'

He said, 'Sure'.

I said, 'Hop on a car.'

'Go on, Hamm, and whatever Bruce Campbell tells you I will guarantee', and he went out of the office. He said good-bye, shook hands, and away he went. That was the whole conversation.

At that time I was under the impression that it was an accident, and they were settling it up. I knew nothing more about it, or heard nothing more about it, until Mr. Noell called me up on the telephone and had a conversation about the suit. I said I didn't know there was a suit. I think the next morning I saw in the paper that there had been a suit filed''.

On November 30, 1937, there was a meeting in the office of Kramer, Campbell, Costello & Wiechert, attorneys for appellant, for the purpose of effecting a settlement with Mrs. Stewart on account of the death of her husband. Those present were Mr. Wiechert, attorney for appellant, Mary Stewart, widow of deceased, her daughter, Mrs. Henry Hamm, and her husband Henry Hamm. It appears in the testimony that Mrs. Stewart had not previously agreed to this settlement, but did so finally, whereupon Wiechert, Mrs. Stewart, and Mr. and Mrs. Hamm repaired to the Probate Court of St. Clair County, Illinois, at Belleville, in which court the administration of the estate of John B. Stewart, deceased, was pending. The petition of Mrs. Stewart for leave to settle the case against appellant and relieve the latter from further liability in the premises, was filed. The amount of the settlement consisted of \$5,150.00, which included an attorney's fee of \$150.00, which was paid to a Mr. Felsen, an attorney called in by Mr. Wiechert to represent Mrs. Stewart, instead of Mr. Noell, her attorney who filed the suit. The Probate Court, on that day, made its order approving said settlement. At a later date Mrs. Stewart filed in the said Probate Court a petition to set aside the previous order of that court authorizing and approving said settlement of November 30, 1937, alleging that the papers signed by her, praying for authority to settle, were signed as a result of fraud and duress on the part of appellant, and its agents and attorneys. After hearing in the Probate Court, her mo-

tion to set aside the approval of said settlement was denied. Subsequently, at the trial of this cause in the District Court, Mrs. Stewart testified that she was induced by fraud and duress to file the petition and procure the order of compromise in the Probate Court because of her fear, induced, in part at least, by a statement of Mr. Wiechert which she took to mean that if she declined to do so, her son-in-law Hamm might lose his position with the Terminal Railroad Association, in which case it would be difficult, if not impossible, to secure other employment, and his wife, Mrs. Stewart's daughter, and their children, would be reduced to privation and suffering thereby. The testimony of her daughter, Mrs. Hamm, corroborated that of Mrs. Stewart. At this point the offer of appellant to introduce evidence of the alleged compromise and that its setting aside was rejected by the Probate Court, was denied upon objection by counsel for appellee.

The case was duly tried in the district court, notwithstanding said purported settlement, and the jury returned a verdict in favor of appellee in the sum of \$17,500. Hamm did not testify at the trial. From the judgment entered upon that finding this appeal is taken. After the submission thereof, the death of Mary Stewart, administratrix, was duly suggested, and, pursuant to stipulation of counsel, Clarence A. Stewart, as administrator of the estate of John R. Stewart, deceased, was substituted as appellee.

1. The first point urged by appellant in its brief and argument is that the court erred in denying appellant's motion for a directed verdict because, (a) the record contains no evidence that the deceased attempted to open the coupler knuckles by using the pin-lifter, an appliance provided to operate the automatic coupler, and (b) because the record contains no evidence that an inefficient coupler was the proximate cause of decedent's injury.

2. The next following points and authorities concern the error assigned because of the action of the trial court in disregarding, and, in effect, setting aside the action of the Probate Court in allowing the compromise settlement referred to, and in refusing to set the same aside.

3. It is insisted that neither fraud nor duress may be predicated on the facts and circumstances in evidence.

4. Error is assigned to a part of the court's charge that, in the absence of evidence that Stewart did not use the pin-lifter, the law presumes that he did use it before going between the ends of the cars.

1. With respect to this first specification of error relied upon, of course it must be recognized that the sole charge of breach of duty against defendant-appellant, is that it furnished the car or cars, here concerned, equipped with couplers not of statutory requirement. It is only because of its bearing upon this charge that evidence concerning the condition of the pin-lifter there in attendance, and its use, or disuse, by the deceased, is relevant. Direct evidence upon these crucial points is lacking. The absence of such sufficiently direct testimony was apparently recognized by the court, and inspired the adding of the following paragraph to its charge:

"You are instructed that it was the duty of deceased, in the performance of his work, before going between the cars mentioned in the evidence, to couple the same, to use the device mentioned in the evidence known as the pin lifter, extending on the outside of the car, and in the absence of any evidence that he did not use the pin lifter, the law presumes that he did use the pin lifter before going between the ends of the cars, if you find he did go between the ends of the cars".

The only parts of the record that could bear upon the condition of the pin-lifter is the testimony of the witness Stogner, especially that found upon pages 29, 31, 34, 36 and 40 of the transcript. The Supreme Court has held that the statute must be liberally construed so as to give a right of recovery for every injury the proximate cause of which was failure to comply with the Act. The jury may not be permitted to speculate as to the cause of the injury, and "the case must be withdrawn from its consideration unless there is evidence from which the inference may reasonably be drawn that the injury suffered was caused



by the negligent act of the employer". *Atchison, Topeka & Santa Fe Ry. Co. v. Toops*, 281 U.S. 351, 354, 355. We are asked to declare that, on the record before us, the motions of appellant for a directed verdict and for a verdict in its favor *non obstante verdicto* should have been sustained; but in view of that record we cannot say that the inference might not reasonably have been drawn by the triers of the fact that there was probable cause to believe that the injury suffered was caused by the breach of duty charged. As hereafter shown the court's charge, to which exception is urged, was erroneous, and necessarily potentially prejudicial.

2. The main contention of appellant that the trial court erred in refusing to recognize the order and judgment of the Probate Court of St. Clair County, Illinois, is based upon the insistence that the action of the wife of the deceased to recover for the death of her husband, especially his pain and suffering, was an asset of decedent's estate of which the Probate Court had jurisdiction; and that its orders and judgments cannot be attacked collaterally in the federal trial court. The argument of appellee that the Probate Court had no jurisdiction over the claim of appellant is based upon the consideration that,

"Where, as here, the death action is one under the Federal Employers' Liability Act, it is governed exclusively by the federal law. The personal representative does not sue by his inherent right as representative of the estate of the decedent, but by virtue of statutory designation and as trustee for the person or persons on whose behalf the act authorizes recovery. And the recovery is not for the benefit of the estate, is not an asset thereof, but is for the personal benefit of the beneficiary or beneficiaries designated by the statute".

*Chicago, Burlington & Quincy R. Co. v. Wells-Dickey Trust Co.*, 275 U.S. 161, *Id.* 163; *Taylor v. Taylor*, 232 U.S. 363; *Mann v. Minnesota Electric Light & Power Co.*, 10 Cir., 43 F.2d 36; *American Car & Foundry Co. v. Anderson*, 8 Cir., 211 F. 301, 308.

The widow was not compelled by law to apply to the Probate Court for authority respecting the compromise of this case, and we think the action of the trial court in rejecting the evidence of approval by the Probate Court of the compromise settlement was justified.

3. The testimony that the acts of the attorneys and claim agent of the appellant constituted a threat to deprive the son-in-law of Mrs. Stewart of his job with the Terminal Association was not strongly in support of the charge of fraud and duress. Nevertheless, it disclosed circumstances which may well have impressed the jury with their impropriety in consideration of the relationship of the various parties concerned. It is to be noted that the entire defense of the appellant was conducted by attorneys for the Terminal, and that the settlement of the suit was initiated by the Terminal attorney. The attorney who filed the suit was not consulted with respect to the settlement. Counsel for appellant insist that "neither fraud nor duress may be predicated on the facts and circumstances in evidence". But we think they meet the requirements of the charge, as heretofore declared by this court in *Winget v. Rockwood*, 69 F.2d 326, 330:

"\* \* \* There is no legal standard of resistance with which the victim must comply at the peril of being remediless for a wrong done, and no general rule as to the sufficiency of facts to produce duress. The question in each case is whether the person so acted upon, by threats of the person claiming the benefit of the contract, was bereft of the quality of mind essential to the making of a contract, and whether the contract was thereby obtained. In other words, duress is not to be tested by the character of the threats, but rather by the effect produced thereby on the mind of the victim. The means used, the age, sex, state of health and mental characteristics of the victim are all evidentiary, but the ultimate fact in issue is whether such person was bereft of the free exercise of his will power.

\* \* \* \* \*

The trend of modern authority is to the effect that a contract obtained by so oppressing a person by threats as to

deprive him of the free exercise of will, may be voided on the ground of duress. What constitutes duress is a matter of law; whether duress exists in a particular transaction is usually a matter of fact":

We think that, at least, this point should be left to the consideration of a jury.

4. The charge of the court to which an express specification of objection is preserved is, as has been said, erroneous for the reason that it is inconsistent with the burden of proof imposed by law upon a plaintiff. The Supreme Court has settled this question, as we think, finally and conclusively.

"In an action for damages for personal injuries while the defendant has the burden of proof of contributory negligence, the plaintiff must establish the grounds of defendant's liability; and to hold a master responsible a servant must show by substantive proof that the appliances furnished were defective, and knowledge of the defect or some omission in regard thereto. Negligence of defendant will not be inferred from the mere fact that the injury occurred, or from the presumption of care on the part of the plaintiff. There is equally a presumption that the defendant performed his duty.

• • • • •

A plaintiff in the first instance must show negligence on the part of the defendant. • • • The negligence of a defendant cannot be inferred from a presumption of care on the part of the person killed. A presumption in the performance of duty attends the defendant as well as the person killed. It must be overcome by direct evidence. One presumption cannot be built upon another."

*Looney v. Metropolitan Railroad Co.*, 200 U.S. 480, 487, 488.

The errors assigned have been fully considered and the conclusion is that the judgment below must be reversed and remanded for a new trial in conformity with the views herein expressed. It is so ordered.

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Petitions for rehearing granted December 7, 1940.  
E. E. Koch, Clerk.

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[fol. 414]

(Judgment.)

United States Circuit Court of Appeals  
Eighth Circuit

October Term, 1940.

Friday, November 1, 1940.

Southern Railway Company, a Corporation, Appellant,  
No. 11,609. vs.

Clarence A. Stewart, administrator of the Estate of John  
R. Stewart, deceased.

Appeal from the District Court of the United States for  
the Eastern District of Missouri.

This cause came on to be heard on the transcript of the  
record from the District Court of the United States for  
the Eastern District of Missouri, and was argued by  
counsel.

On Consideration Whereof, it is now here ordered and  
adjudged by this Court, that the judgment of the said  
District Court, in this cause, be, and the same is hereby,  
reversed with costs; and that the Southern Railway Com-  
pany, a Corporation, have and recover against Clarence  
A. Stewart, Administrator of the Estate of John R.  
Stewart, deceased, the sum of ..... Dollars for  
its costs in this behalf expended and have execution  
therefor.

And it is further ordered by this Court that this cause  
be, and the same is hereby remanded to the said District  
Court for a new trial in conformity with the opinion of  
this Court filed herein November 1, 1940.

November 1, 1940.

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